SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY, PETITIONER,

vs.

W. E. WAGGONNER, SHERIFF, ETC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, SECOND CIRCUIT

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[fol. 5]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT, BOSSIER PARISH, LOUISIANA

EXTRACT FROM COURT MINUTES

INTERSTATE OIL PIPE LINE CO.

VERSUS

W. E. WAGGONNER, SHERIFF & EX-OFFICIO. TAX COLLECTOR

Number 19,628 Civil Docket

June 24, 1958	Default.
March 13, 1959	Case is set for trial on March 26, 1959.
March 26, 1959	Case is called for trial. Admission of facts is filed. The case is tried and is submitted on briefs, reserving the right of oral argument. The brief of plaintiff is to be filed within 30 days and the defendant is given an additional 30 days in which to file brief.
September 19, 1962	For reasons assigned in written opinion, the demands of plaintiff are rejected at plaintiff's cost. See opinion. Opinion is signed and filed.
September 28, 1962	Judgment is read in open Court. See decree. Judgment is signed and filed. On oral motion of counsel for plaintiff, order of suspensive and devolutive appeal is asked for and is granted by the Court, returnable to the Honorable Court of Appeal, Second Circuit, Shreveport, Louisiana, on November 12, 1962. Suspensive and devolutive appeal bond together is fixed at $150.00.

[fol. 6]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

Number 19,628

INTERSTATE OIL PIPE LINE CO.

VERSUS

W. E. WAGGONNER, SHERIFF & EX-OFFICIO TAX COLLECTOR

PETITION—Filed January 5, 1954

To the Honorable Twenty-Sixth Judicial District Court of Louisiana in and for the Parish of Bossier:

The petition of INTERSTATE OIL PIPE LINE COMPANY, a corporation of the State of Delaware, duly qualified to do business in the State of Louisiana, with respect represents:

1.

That W. E. Waggoner, Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, is indebted unto your petitioner in the sum of $1,315.35 (ad valorem taxes heretofore paid by it under protest) together with two per cent per annum interest thereon from December 30, 1953, for this to-wit:

2.

That there is within the geographic limits of the Parish of Bossier, Louisiana, a federal area known and identified as Barksdale Field which is (and was at all times referred to herein) a military post or establishment of the United States consisting of lands substantially all of which were conveyed to the Federal Government by instruments executed in the year 1930, recorded in Conveyance Book 102, pages 467, 469 and 472, Records of the Parish of Bossier.

3.

That the conveyances referred to—through which the lands described were acquired by the United States—were

executed with the consent and approval of the State of Louisiana in accordance with the provisions of the laws of the State relating thereto, under the terms of which exclusive jurisdiction of the lands conveyed was ceded or granted to the United States except in respect to the service of process issuing under State authority.

[fol. 7]

4.

That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described completely ousted all jurisdiction and authority of the State and its political subdivisions within such area (including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon—no such authority having been conferred by Act of Congress.

5.

That on January 1, 1953, petitioner owned two interstate oil pipe lines described as one 8" trunk line and one 10" trunk line, each of which extended a distance of 2.91 miles within the federal area referred to as Barksdale Field.

6.

That in preparing and compiling the assessments of oil pipe lines for the year 1953, the Louisiana Tax Commission illegally and erroneously included the pipe lines of your petitioner situated within the limits of Barksdale Field as though the same were subject to taxation by the State and the political subdivisions thereof for ad valorem tax purposes, extending valuations thereon at standard rates ($4500.00 per mile for the 8" line and $6300.00 per mile for the 10" line) aggregating $31,430.00, upon which the State and political subdivisions thereof having general authority to tax in Ward 2 of Bossier Parish then imposed or levied taxes for the year 1953 at the following rates aggregating $1315.35:

[fol. 8]

	Mills
State	5.75
Parish	4.00
Library	.60
Consolidated R.D. 1	6.00
Health Clinic	1.00
P/W School	10.00
Consolidated S.D. 13	9.50
Bossier Levee District	5.00
	41.85

7.

That on December 30th petitioner paid to the Sheriff and Tax Collector of the Parish of Bossier all ad valorem taxes levied against its properties in the Parish of Bossier for the year 1953 aggregating the sum of $7,679.15, which amount included the sum of $1,315.35 illegally levied without jurisdiction to do so upon the property of your petitioner situated within the limits of Barksdale Field; that the taxes paid by your petitioner to the extent of said sum of $1,315.35 were paid expressly under protest as permitted by law (R.S. 47:2110) and this action is brought to recover the amount so paid, together with interest thereon.

Wherefore, petitioner prays for service and citation hereof as the law directs and finally that there be judgment in its favor and against W. E. Waggonner, Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, Louisiana, in the sum of $1,315.35 with two per cent per annum interest thereon from December 29, 1953, until paid.

For all orders necessary and general relief.

Blanchard, Goldstein, Walker & O'Quin, Attorneys for Interstate Oil Pipe Line Company.

[fol. 9] *Duly sworn to by Leon O'Quin, jurat omitted in printing.*

[fol. 10] [File endorsement omitted]

[fol. 11]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY

VERSUS

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF PARISH OF BOSSIER, STATE OF LOUISIANA

ANSWER—Filed September 10, 1958

To the Honorable, the Twenty-Sixth Judicial District Court, Parish of Bossier, State of Louisiana:

Now into Court, through undersigned counsel, comes W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, State of Louisiana, who for answer to the plaintiff's petition herein with respect says:

1.

The allegations of Article 1 of plaintiff's petition herein are denied.

2.

Respondent admits that Barksdale Air Force Base, consisting of lands acquired by the United States primarily for military purposes, is situated within the geographical limits of Bossier Parish, Louisiana, but otherwise the allegations of Article 2 of plaintiff's petition herein are denied for lack of sufficient information to justify a belief in same. Further answering the allegations thereof, respondent shows that the instruments of conveyance referred to are the best evidence of that which they contain.

3.

Respondent denies the allegations of Article 3 of plaintiff's petition herein for lack of sufficient information to justify a belief in same. Further answering the allegations

thereof, respondent shows that the laws referred to are the best evidence of that which they contain, and their interpretation and application are matters and conclusions of law.

4.

Respondent denies the allegations of Article 4 of plaintiff's petition herein; and, further answering the allegations thereof, respondent shows that the laws referred to are the best evidence of that which they contain, and their interpretation and application are matters and conclusions of law.

[fol. 12]

5.

Respondent admits the allegations of Article 5 of the plaintiff's petition herein.

6.

Respondent admits the listing by the Louisiana Tax Commission of the plaintiff's oil lines situated within the geographical area of Barksdale Air Force Base for ad valorem taxes for the year 1953, and the levy of taxes thereon by the State and other authorized political subdivisions thereof at the alleged established rates, with an aggregate tax of $1,315.35, but otherwise the allegations of Article 6 of the plaintiff's petition herein are denied. Further answering the allegations thereof, respondent shows that said listing for, and levy of, ad valorem taxes for the year 1953 are the best evidence of that which they contain.

7.

Respondent admits that the plaintiff paid under protest to him the ad valorem taxes for 1953 on the oil pipelines listed within the geographical area of Barksdale Air Force Base in the sum of $1,315.35, but otherwise the allegations of Article 7 of plaintiff's petition herein are denied.

Wherefore, respondent prays: that, after due proceedings had, there be judgment rendered herein in favor of respondent, rejecting the plaintiff's demands; and for all

such additional relief as law, equity, and the nature of the case may permit.

Jack P. F. Gremillion, Attorney General of Louisiana.
Address: State Capitol, Baton Rouge, Louisiana.

George M. Ponder, First Assistant Attorney General.
Address: State Capitol, Baton Rouge, La.

Ferdinand A. Cashio, Special Assistant Attorney General.
Address: 1313 Centenary Blvd., Shreveport, La.

Counsel for Respondent, W. E. Waggonner, Sheriff and Ex-Officio Tax Collector of Parish of Bossier, State of Louisiana.

[fol. 13] *Duly sworn to by Ferdinand A. Cashio, jurat omitted in printing.*

[fol. 14]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY

v.

SHERIFF, PARISH OF BOSSIER

ADMISSIONS OF FACT FOR THE PURPOSE OF THE ABOVE ACTION—Filed March 26, 1959

1.

During the year 1930 the United States of America acquired title to a tract of land constituting approximately 22,000 acres situated in the Parish of Bossier, Louisiana, particularly described in the following conveyances, certified copies of which are to be filed with the record herein:

(A) Deed from the City of Shreveport, Louisiana, to the United States of America, dated November 8, 1930, and recorded in Conveyance Book 102, page 472, of the records of Bossier Parish, Louisiana;

(B) Deed from the State of Louisiana to the United States of America, dated August 30, 1930, and recorded in Conveyance Book 102, page 469, of the records of Bossier Parish, Louisiana;

(C) Deed from the Board of Commissioners of the Bossier Levee District to the United States of America, dated February 5, 1930, and recorded in Conveyance Book 102, page 467, of the records of Bossier Parish, Louisiana.

2.

The conveyances evidenced by the instruments referred to were donations of the properties described therein made pursuant to the provisions of the Constitution of the State of Louisiana (Article IV, §12) upon the condition and with the understanding that the United States would establish, operate and maintain a military air force base upon the lands conveyed.

3.

During the years 1930, 1931 and 1932 the government of the United States caused extensive runways, administrative buildings, hospitals, barracks, machine shops, hangars and numerous other structures and facilities required for [fol. 15] the maintenance of a military air force post or base to be constructed upon the lands so acquired costing many millions of dollars, which properties and constructions thereon (as an entity) now known as "Barksdale Field" or "Barksdale Air Force Base" have been maintained by the government at all times since, as required by military air force demands.

4.

Since the establishment of the Barksdale Air Force Base the same has been used continuously as a military post in

accordance with the purposes for which the lands upon which it is situated were acquired by the United States and the United States has at all times since the establishment of the Base (through the Secretary of War and later through the Secretary of the Air Force) possessed and exercised such jurisdiction and sovereign legislative and judicial power over the lands acquired by virtue of the deeds described in paragraph 1 hereof, to the extent that the same was vested by virtue of the Constitution and laws of the United States and of the State of Louisiana.

5.

No act of Congress of the United States specifically grants to the State of Louisiana jurisdiction and power to levy and collect taxes of the character involved in this suit.

6.

On January 1, 1953, plaintiff, INTERSTATE OIL PIPE LINE COMPANY owned two interstate oil pipe lines described as one 8" trunk line and one 10" trunk line, each of which extended 2.91 miles within the area referred to as Barksdale Field, the exact location of which lines as then constituted being delineated upon plat annexed hereto as Exhibit "Interstate" 1.

[fol. 16]

7.

The tracts traversed by the pipe lines of Interstate Oil Pipe Line Company within the limits of Barksdale Field (as shown upon Exhibit "Interstate" 1) included no part of the lands described in Public Land Order No. 701 referred to in the decision of the Supreme Court of the State in the case of *Murphy Corporation* v. *Fontenot*, 73 So. 2d. 180, 225 La. 379, and have been used at all times relevant herein exclusively for military purposes.

8.

Interestate Oil Pipe Line Company is engaged solely in the transportation of crude oil—primarily in interstate commerce; is not engaged in the production of oil, gas or

other minerals; has no interest whatever in any oil, gas or other minerals produced from any lands within the limits of Barksdale Field and no affiliation with any person or corporation engaged in such production, none of which has ever entered its pipe lines traversing the field limits.

9.

The public has at no time been permitted freedom of access to any portion of the lands within the limits of Barksdale Field traversed by the pipe lines referred to herein and the agents and employees of Interstate Oil Pipe Line Company have never been permitted upon those premises for the purposes of inspection or maintenance of said lines except when accompanied by military guard or escort in the presence of whom all such work must be performed.

10.

In preparing and compiling the assessments of oil pipe lines for the year 1953 the Louisiana Tax Commission included the pipe lines of Interstate Oil Pipe Line Company situated within the limits of Barksdale Field for ad valorem tax purposes extending valuations thereon at standard rates ($4,500.00 per mile for the 8" line and $6,300.00 per mile for the 10" line) aggregating $31,430.00, [fol. 17] upon which the State and political subdivisions thereof having general authority to tax in Ward 2 of Bossier Parish then imposed or levied the taxes for the year 1953 at the following rates, aggregating $1,314.35:

	Mills
State	5.75
Parish	4.00
Library	.60
Consolidated R. D. I	6.00
Health Clinic	1.00
P/W School	10.00
Consolidated S. D. 13	9.50
Bossier Levee District	5.00
	41.85

11.

On December 30, 1953, INTERSTATE OIL PIPE LINE COMPANY paid to the Sheriff and Tax Collector of the Parish of Bossier all ad valorem taxes levied against its properties in the Parish of Bossier for the year 1953, aggregating the sum of $7,679.15, which amount included the sum of $1,315.35 levied upon the pipe lines of that corporation situated within the limits of Barksdale Field, which latter amount ($1,315.35) was paid expressly under protest (LSA-R.S. 47:2110) as evidenced by a copy of the letter of transmittal of said payments annexed hereto as Exhibit "Interstate" 2.

The foregoing facts shall be deemed to have been admitted for the purpose of the above styled action in response to Requests for Admissions thereof, in accordance with LSA-R.S. 13:3784.

Leon O'Quin, Of Counsel for Plaintiff.

Ferdinand A. Cashio, Of Counsel for Defendant.

[fol. 43]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,044

NATURAL GAS AND OIL CORPORATION

VERSUS

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY

VERSUS

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION

VERSUS

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

OPINION OF THE COURT—September 19, 1962

These three cases were consolidated for the purpose of trial as they presented almost identical factual situations and involved the same question of law. The cases were originally tried and submitted to Judge Frank M. Dougherty, who was temporarily assigned to this District and by written stipulation of all parties the cases have been transferred for decision to either of the present Judges of this Court.

The plaintiff's are owners of certain oil or gas pipe lines and equipment connected therewith, situated on the United States Military Reservation known as "Barksdale Air Force Base", in Ward Two of Bossier Parish, Louisiana. They have paid under protest ad valorem taxes assessed against these lines and equipment to the Tax Collector for the Parish of Bossier, State of Louisiana, and other political subdivisions having taxing authority in Ward Two of this Parish, contending that the United [fol. 44] States Government has exclusive legislative authority over the Air Base area and that the State, and its subdivisions have no authority to levy taxes on property situated on the military reservation.

This allegation is based on the premise that the State of Louisiana had by Act 12 of 1892 ceded its jurisdiction over all lands thereafter acquired by the Federal Government for military or other governmental purposes and reserved only the right to administer criminal laws and serve civil process thereon.

It is further shown that Section 12 of Article IV of the State Constitution allowed a municipal corporation to acquire land and donate same to the Federal Government for flying fields, etc., and that the land area of Barksdale Air Force Base was donated to the U. S. Government by the City of Shreveport pursuant to this Section.

That Article I, Paragraph 8, Clause 17 of the United States Constitution provides that the Congress shall have exclusive power over all places purchased by the United States with the consent of the State Legislature to be used for the erection of forts, magazines, arsenals, etc. Plaintiff's contend that a donation would be also covered by this provision of the United States Constitution as the use of the word "purchase" was not to be given a limited definition.

The case principally relied upon by plaintiff's is *Surplus Trading Company versus Cook*, 281 US 647, in which the US Supreme Court held that the State of Arkansas had no jurisdiction to levy a tax on blankets purchased by a surplus trading company and situated within Camp Pike, the Court having found that Camp Pike came within the specific wording of Article 1, Section 8, Clause 17, relating

to "forts, magazines, arsenals, dockyards, and other needful buildings.

[fol. 45] Since this case however, there seems to be a tendency by the court to limit the definition of "forts, magazines, arsenals, etc., as contained in the above section of the Constitution and to allow the States to exercise taxing authority on private properties situated on government reservations not specifically stated in this constitutional provision. Particularly where the property taxed has no military function and where the tax is not being imposed either directly or indirectly on the Federal Government.

The underlying principle involved in the vesting of exclusive authority and jurisdiction in the Federal Government in these situations, is to prevent the States from doing any act or levying any tax which would interfere with or impede the military powers or governmental functions of the United States.

The Supreme Court of this State has held in the case of International Business Machine Corporation versus Ott, 89 S 2n, 193, that machines leased to the Federal Government in government buildings in New Orleans were subject to the State tax. The property there involved had a much closer connection with the governmental purpose than does the property involved in the cases under consideration.

The pipelines and oil field equipment belonging to plaintiff's and sought to be taxed, has no logical connection with or benefit to the military purpose of the Air Base.

In the case of Murphy Corporation Versus Fontenot, 73 S2d 180, the Louisiana Supreme Court held that the State could impose a severance tax on gas and oil produced from wells drilled on the same military reservation as we have involved in this case. The plaintiff's attempt to distinguish that case from the one at hand in the type of tax being imposed. In all of the cases cited by the parties which have been decided by either the United States Supreme Court or the State Supreme Court, bearing on the right of the State to tax property on Federal installa-

[fol. 46] tions, the type of tax sought to be levied has not been the deciding factor in the decisions. The Courts have on the other hand determined the authority of the State by analyzing the relation of the property to be taxed to

the governmental purpose and if no connection is found they have allowed the State to exercise taxing authority with the limited exception of the governmental installations falling specifically within the wording of Article I, Paragraph 8, Clause 17 of the Constitution, as in the Surplus Trading Company versus Cook case.

There either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base when said property is owned by other than the government or its personnel or this authority to tax has been removed altogether. The Murphy Corporation versus Fontenot case therefore has definitely decided this question insofar as the powers of the State of Louisiana over Barksdale Air Force Base are concerned.

There is little doubt left as to the intent of the United States government acting through its Department of Interior, when it provided in its oil and gas lease to plaintiff, Natural Gas and Oil, that the lessee should pay all taxes lawfully assessed by the *State* or the United States upon *improvements*, oil and gas produced from the lands, or other rights, *property* or *assets* of the *lessee*.

This contract is binding on both the parties to same and falls clearly within the language of the Murphy Corporation case.

There is also evidence in this case showing that the Air Force Base receives certain services from the political subdivisions of the State such as water and school facilities for base personnel. In line with the case of IBM versus Ott, 89 S 2d 193, and Silas Mason Company versus Tax Commission, 302 U. S. 186, the acceptance of these [fol. 47] services by the Federal Government would indicate that the United States has not manifested an intent to accept exclusive jurisdiction.

For the foregoing reasons the Court finds that the properties owned by all of the plaintiff's in these cases as described in the pleadings herein and located on Barksdale Air Force Base, are subject to taxation by the State of Louisiana, the Parish of Bossier and other taxing authori-

ties of the State in this Parish. Accordingly the demands of the plaintiff's should be rejected at their costs.

Rendered on this 19th day of September, 1962.

O. E. Price, Judge.

(*NOTE:* Typographical errors appearing in the above opinion are as they appear in the original.)

[fol. 49]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY,

VERSUS

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

JUDGMENT

This Cause having come on regularly for trial, evidence having been adduced, after hearing the arguments and briefs of counsel, the Court considering the law and the evidence to be in favor of the defendant for the reasons assigned in a written opinion filed herein on September 19, 1962,

It Is Ordered, Adjudged and Decreed that there be judgment herein in favor of the defendant, W. E. Waggoner, in his official capacity as Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana, and against the plaintiff, Interstate Oil Pipe Line Company, rejecting the latter's demands at its costs.

Judgment Rendered on September 19, 1962.

Judgment Read Aloud and Signed in Open Court, in Benton, Louisiana, on this the 28 day of September, A.D., 1962.

O. E. Price, Judge, Twenty-Sixth Judicial District Court, Parish of Bossier, State of Louisiana.

[fol. 52]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY
(now Humble Pipeline Company)

V.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

MOTION FOR AN ORDER RECOGNIZING CHANGE OF NAME—Filed October 4, 1962

Now comes plaintiff in the above styled cause—a corporation of the State of Delaware—and shows that by charter amendment effective July 31, 1961, its corporate name was changed to Humble Pipeline Company.

Wherefore, appearer prays that the record and proceedings in the above styled cause be amended by substitution of the new name for the name of plaintiff as heretofore set forth.

For all orders necessary and general relief.

Blanchard, Goldstein, Walker & O'Quin, By Leon O'Quin, Fifth Floor, First National Bank Building, Shreveport, Louisiana, Attorneys for Plaintiff.

ORDER RECOGNIZING CHANGE OF NAME—October 4, 1962

Considering the foregoing motion and affidavit annexed thereto,

It Is Ordered that the record and all proceedings in this cause be and the same are hereby amended by substitution of the name Humble Pipeline Company for the name of plaintiff as heretofore set forth.

Done and Signed on this 4th day of October, 1962.

ENOS C. McCLENDON, JR., Judge, 26th Judicial District Court of Louisiana in and for the Parish of Bossier.

[fol. 53]

STATE OF LOUISIANA :
PARISH OF CADDO :

Before me, the undersigned authority, personally came and appeared Leon O'Quin, who being first sworn deposes and says that he is of counsel for plaintiff in the foregoing motion; that all facts set forth therein are true and correct; and that said change of name through charter amendment has been duly filed in the office of the Secretary of State of Louisiana;

That this motion has been served upon Ferdinand A. Cashio, Esquire—1313 Centenary Boulevard, Shreveport, Louisiana—counsel for defendant, by mailing a copy thereof to him properly stamped and addressed.

LEON O'QUIN

Sworn to and subscribed before me, notary, on this 1st day of October, 1962.

George M. Simpson, Notary Public in and for Caddo Parish, Louisiana.

[fol. 76]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,044

NATURAL GAS & OIL CORPORATION,

v.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION,

v.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY,

v.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

STIPULATION

Counsel for the parties to the above entitled and numbered causes pending in the 26th Judicial District Court of Louisiana in and for the Parish of Bossier, being present upon Barksdale Air Force Base, hereby waive all statutory requirements regarding the taking of oral depositions and stipulate and agree that the deposition of Colonel Alfred J.

Hanlon, Jr., a witness for the plaintiff in each of said causes, be taken forthwith (Monday, January 26, 1959 at 2:30 P.M.) on oral examination before Ray J. Hanrahan, Court Reporter (First Judicial District Court), who shall record all questions and answers in shorthand and transcribe the same.

[fol. 77] It is further stipulated that the transcript of the testimony of the witness together with a copy of this Stipulation be returned by the reporter to the Court where said causes are pending to be used as evidence in each of said causes upon certification by the reporter that the deposition is a true record of the testimony given by the witness (who shall not be required to subscribe the same) subject to rejection by the Court of such portion or the whole thereof as may be objected to at the taking of same or such other legal objection (not relating to the form and manner of taking and returning the deposition) as may be made to the introduction thereof at the trial of the cause.

Clarence L. Yancey, Of Counsel for Natural Gas & Oil Corporation and Mississippi River Fuel Corporation.

Leon O'Quin, Of Counsel for Interstate Oil Pipe Line Company.

Ferdinand A. Cashio, Special Assistant Attorney General.

[fol. 78]

INTERSTATE EXHIBIT No. 6

IN THE CIVIL DISTRICT COURT, PARISH OF BOSSIER
STATE OF LOUISIANA

No. 19,044

NATURAL GAS & OIL CORPORATION,

vs.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION,

vs.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

No. 19,628

INTERSTATE OIL PIPE LINE COMPANY,

vs.

W. E. WAGGONER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF BOSSIER, STATE OF LOUISIANA.

APPEARANCES:

MR. CLARENCE L. YANCEY, of counsel for Natural Gas & Oil Corporation and Mississippi River Fuel Corporation.

MR. LEON O'QUIN, of counsel for Interstate Oil Pipe Line Company.

MR. FERDINAND A. CASHIO, Special Assistant Attorney General.

Deposition of Colonel Alfred J. Hanlon, Jr., witness on behalf of the plaintiffs in the above entitled causes, taken pursuant to the attached stipulation before Ray J. Hanrahan, a notary public ex officio and official court reporter, First District Court, Caddo Parish, Louisiana, at the offices of Colonel Hanlon, Barksdale Air Force Base, State of Louisiana, on the 26th day of January, 1959.

[fol. 79] COLONEL ALFRED J. HANLON, JR. of lawful age, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. O'Quin:

Q. Colonel, how do the size and character of your facilities at Barksdale compare with other Air Force Bases?

A. I don't really know.

Q. Is this one of the largest Air Force Bases?

A. It is one of the larger ones that I know of, yes, sir.

Q. Can you give us some general idea of the buildings here, the plant here, and the personnel occupied here?

A. Yes. We have about eight thousand people employed on the base, including both military and civilian. We have a cantonment area which covers I would say about one thousand to fifteen hundred acres, and then we have the semi-improved part of the base which includes the air field proper, which probably covers another fifteen hundred acres, and then about nineteen thousand acres of unimproved lands, which includes what we refer to as the East Reservation, which is the area you have in question.

Q. The area Mr. Yancey has in question.

A. All right.

Q. This is all completely under fence?

A. Yes, sir.

Q. The public is excluded from the limits of Barksdale [fol. 80] Field?

A. Yes, sir. Well, the public isn't excluded but they have only controlled access to it.

Q. No one comes in without express permission?

A. That's right.

Q. And they could not just walk in if they chose to?

A. No, sir.

Q. Are you in any sense in any of the functions of the Air Force Base dependent upon the services or facilities furnished by the State or the Parish or any Parochial authority?

A. Well, we are dependent on them for public utilities, of course.

Q. You purchase those at the gate, do you not?

A. Yes, sir.

Q. They have nothing to do with the distribution or use of those utilities within the post?

A. Not to my knowledge, no.

Q. In other words you pay for those services as delivered to you at the Post gate?

A. That is my understanding, yes, sir.

Q. Colonel, do you know the situation of the pipe line owned by Interstate Oil Pipe Line Company?

A. Not in detail.

Q. You wouldn't know exactly the location of that pipe [fol. 81] line in 1953?

A. Not without referring to maps.

Q. I show you a plat which I will identify as Interstate No. 1 and ask you to state whether or not you can say that that is generally the location of the Interstate Oil Pipe line?

A. That is indicated in red here?

Q. Yes, sir, the red line, and the heavy red line shows the location within the limits of the field and the light red line outside the limits of the field?

A. I couldn't answer that from personal knowledge. I assume that this is probably the actual location of it.

Mr. O'Quin: Just mark that Interstate No. 1 for me. (Addressing reporter.)

Q. Colonel, are you familiar with the operation of this Post in years past?

A. How many years past?

Q. Well, any number?

A. I have only been here for the past—I have been Base Commander here for the past fourteen months. I am not familiar in detail with the operation of the Base prior to that time.

Q. Do you know generally speaking that it was the same as it is now?

A. Yes.

[fol. 82] Q. You know for a fact that it is, generally speaking, the nature of the operation at all similar Posts of the Air Force?

A. Yes, sir, as far as the Base is concerned, yes, sir.

Q. And in performing these functions within the limits of the Post those operations are conducted entirely under your direction?

A. No, not entirely.

Q. Then what other authority would be exercised?

A. The Wing Commander, the Commander of the 4238 Strategic Wing.

Q. But all functions are supervised and controlled by Air Force Personnel Officers exclusively?

A. Yes, sir.

Q. Military or Air Force—I am not too clear about what is Air Force and what is Army—but it is entirely under the direction and exclusive control of the Air Force authorities and officers?

A. That's right.

Q. Exclusive of any civilian authority?

A. That's right.

Mr. O'Quin: That is all.

Direct examination.

By Mr. Yancey:

Q. You are familiar, are you not, with the location of the oil and gas leases in the southeastern part of the Base, where the producing wells are located?

[fol. 83] A. Yes, sir.

Q. Could you tell me what use is being made at this time of that area by the military people, if any use is being made of it by them?

A. I can tell you what use we are putting the whole reservation to. We don't differentiate here between the leased portions and the unleased portions of the east reservation, because even in the leased areas we have retained the full surface rights and control of the surface area. We use the whole east reservation for quite a large number of things and we have plans for further use for it in the future.

Q. Excuse me, when you say east reservation, does that embrace the part that is under the oil and gas lease?

A. That's right. As I say we don't differentiate between the leased and non-leased areas as far as our thinking is concerned. We call it all the east reservation. Everything east of the flying field is considered the east reservation.

Q. I see, yes, sir.

A. We are using it right now for evasion and survival training of our SAC combat crews, not just for this Base but for half a dozen other Second Air Force Bases.

Q. Within the limits of security could you give us some idea of what that entails?

A. Yes, sir. It entails putting these combat crews out [fol. 84] there and teaching them how to survive in the wilderness. They spend about a week out there getting this survival training right out there in the woods; drilling in the woods and living off the land as much as possible, and it is a regular course of instruction for our combat crews to enable them to survive if they are ever forced down either in this country or in enemy territory.

Q. Are there other uses to which this area is put?

A. Yes, sir. A portion of it has been set aside for a Capehart family project, which will be built this coming year, two family dwelling units.

Q. Is that to house military personnel?

A. Yes, sir. It is to house the personnel of Bossier Base out there.

Q. Is that an exclusive operation of the military, this housing operation?

A. Yes, sir.

Q. Do any civilian authorities have anything to do with that?

A. Not as far as operating it or running it is concerned.

Q. Does this land in question have anything to do with serving a function as an approach area or tank drop area in the training of airmen?

A. Yes, sir. I can run through all these things if you want me to.

[fol. 85] Q. Yes, sir, if you will, please go ahead?

A. We have a large area of it set aside as a tip-tank salvo drop area, for the purpose of dropping these tip-tanks containing fuel from jet aircraft in case of an emergency. We have been harvesting the forests out there for about the last six years, which has realized quite a considerable yield for the Government. We have a large transmitter, SAC transmitter, and receiver set out there, located at two separate locations, one of the sites being at the north end of the reservation and the other one at the southwest corner of it.

Q. I notice you use the term SAC. Will you explain for the record what that means?

A. Strategic Air Command. It is part of our Strategic Air Command global communication system. We have an area set aside for bomb and explosive ordnance disposal, where we detonate our obsolete and obsolescent bombs and so forth, defective ordnance material of all types. We have an aero club strip we operate on the reservation.

Q. What is the purpose of that, Colonel?

A. It is a club for the use of military personnel and dependents and also for civilian employees; a flying club is what it is. They own and operate about eight light airplanes out there, and this is part of a SAC-wide and Air Force-wide program under Special Services, the same as [fol. 86] our officers' Clubs and N.C.O. Clubs and so forth. It is a morale and welfare organization. It enables our people to learn how to fly at a considerably lower rate than they would have to pay if they went downtown to take flying lessons.

Q. But that is under the supervision of the Air Force?

A. Yes, sir. The reservation is also very heavily used for recreation and game propagation; hunting and fishing and boating and picnics.

Q. Is that for the benefit of military personnel exclusively?

A. Yes, sir, and we have a rather ambitious program under way to develop the reservation for this program. It is a big morale factor too. We have been keeping attendance records on the reservation for the last eight or ten months and we have been averaging about seven thousand people a month out there, just going out there for fishing, hunting, boating and other recreational purposes, and for picnics. For the future our plans include two classified projects, which are official Air Force projects but which I can't discuss because of their classified nature. Both of them would involve, or one of them would involve considerable construction.

Q. Do you consider those to be important to the national security?

[fol. 87] A. Yes, sir, vitally. That is primarily why they are classified. An area of the reservation has also been recommended as a site for a possible future National Cemetery. There is also an area which has been set aside as a possible future golf course site in the event future planning and development of the Base proper requires that our present golf course be utilized for buildings.

Q. Would that be a recreational facility just for the military personnel stationed on the Base?

A. Yes, sir. That is about it.

Q. Colonel, would you care to comment on whether or not Barksdale is considered you might say one of the first lines of defense in the event of a national emergency?

A. Yes, sir, as a Strategic Air Command Base I think that goes without saying.

Q. Aren't you on an alert footing at this time on this Base so that in the event of a sudden emergency the Base would be on a war time footing almost immediately?

A. Yes, sir.

Q. Have I stated that correctly?

A. Yes, sir. That is common to all SAC bases.

Q. Doesn't one need a special permit or perhaps an armed guard with him to actually physically go on the portion of the Base we have been talking about?

A. No—

[fol. 88] Q. How would one go about that?

A. The access to the reservation is controlled but a special permit or an armed guard is not required.

Q. What is the control that is used?

A. We have a control point out there at the entrance to the reservation, at the Base Forestry Officers' building, where everybody is required to stop and register and state his purpose before he can go on out onto the reservation.

Q. In other words the ordinary civilian could not have access to that part of the reservation without the permission of the military authorities, is that correct?

A. That's right.

By Mr. O'Quin:

Q. What about the area over on the western portion where I have suggested this pipe line might be? What is the situation there, Colonel? Would civilians be permitted in there?

A. In the western area of the reservation?

Q. Yes, sir, those who come in your principal gate here, civilians who might come in for instance to inspect the pipe line of the Interstate Oil Pipe Line Company? Would they be accompanied by guards?

A. Yes, sir, in all probability they would be if they were in any of our restricted or close to any of our restricted areas of the Base.

[fol. 89] Q. Would the area in which this red line appears be within the restricted area you mentioned, as shown on the plat identified as Interstate No. 1?

A. Yes, sir, most of it would be close enough to our restricted areas to require some sort of escort.

Mr. O'Quin: That is all I have.

Mr. Yancey: Do you have any questions, Mr. Cashio?

Mr. Cashio: Yes, sir.

Cross examination.

By Mr. Cashio:

Q. Colonel, this map that counsel has referred to as having been identified—actually you did not identify this plat, did you?

A. No.

Q. It has been marked as Exhibit 1, but you have not identified it?

A. That's right.

Q. I just want to make the record clear. Now, Colonel, you have enumerated certain uses made of portions of the east reservation, the east reservation including the land which is under oil and gas lease in question. These uses are relative to the surface, aren't they?

A. Yes, sir.

Q. They don't pertain to anything underneath the surface?

A. No.

[fol. 90] Q. You don't claim nor do you exercise any rights underneath the surface of the part that is under oil and gas lease?

A. As far as the Air Force is concerned, no. As far as the Air Force is concerned we have no particular rights or no particular use or need for the mineral deposits underlying the reservation; if that is what you are talking about.

Q. Yes, sir.

A. However, the Department of the Interior, of course, is considerably interested in this.

Q. I was concerned with the various uses you mentioned that were being made of a portion of the east reservation.

A. No, sir, as far as our strictly military Air Force plans are concerned, other than the construction which will probably take place out there in the future, we have no use for the oil, as far as the military is concerned. There are other Departments of the Government, of course, which are vitally interested in the mineral deposits out there.

Q. And you have exercised no sub-surface rights of any kind, to your knowledge?

A. I don't know what you mean by sub-surface rights.

Q. Well, I have reference to the minerals?

A. We have never dug any wells. To my knowledge we [fol. 91] haven't exercised any sub-surface rights. This is not to imply, however, that I think we don't have them.

Q. Colonel, the Air Force doesn't possess any financial interest or control over the pipe lines or the equipment or fixtures, the machinery, used to recover oil and gas from the deposits in the east reservation or for the transportation of those minerals, is that correct?

A. Basically that is correct. We do, of course, exercise certain control insofar as the contract with these civilian companies are concerned, regarding maintenance of the areas and pipe lines and that sort of thing, and we still exercise control of the reservation as a whole as far as fire prevention and that sort of thing is concerned.

Q. To be more specific the Air Force doesn't own any of these pipe lines or fixtures or equipment?

A. No, sir.

Q. They are maintained exclusively by the private interests, are they not?

A. To the best of my knowledge, yes, sir.

Q. Just what type of control does the Air Force maintain insofar as those items are concerned?

A. Well, I wouldn't be able to tell you specifically without referring to the terms of the lease. However, generally, we usually do reserve the right to specify how these areas [fol. 92] will be maintained, with particular regard to fire prevention and removal of brush and that sort of thing.

Q. Safety factors you are speaking of?

A. Yes, sir.

Q. Is that the only type control you have reference to?

A. Yes, sir, as far as I know. I would not be able to quote you any more without referring to the leases we have.

Q. I don't know that this is material but since counsel touched upon it I thought I might ask you this. You have testified that the Base isn't dependent on any services rendered by the Parish or the State or local political subdivisions other than public utilities and that the Base purchases those utilities at the gate. Is that correct, Colonel?

A. That is basically correct, I think, yes, sir.

Q. Well, if we might add another service, is it not true that many of your personnel, children of your personnel, attend our public schools off the Base?

A. That is correct. Of course, the public schools are reimbursed for that by the Federal Government.

Q. Nevertheless they do use them?

A. Yes, sir.

Q. I just wanted to add that there were possibly other services that the Base was dependent upon that you did not [fol. 93] mention.

A. Yes, sir.

Q. In other words, when you mentioned public utilities, you did not intend to make that exclusive?

A. No, sir.

Q. That was just for illustrative purposes?

A. That is correct.

Q. Just an illustration?

A. Yes, sir, that's right.

Mr. Cashio: I think that is all.

Redirect examination.

By Mr. O'Quin:

Q. To go back to that matter, the attendance at schools that counsel speaks of, the attendance at schools off the Post—

A. Yes, sir.

Q. The Government does reimburse them according to the attendance at those schools?

A. Yes, sir, on a per capita basis.

Q. If they attend the Parish school or parochial or the City school, those authorities are reimbursed on the per capita basis?

A. The public schools, yes, sir, not parochial.

Q. I didn't use the word parochial in the sense of Catholic, but I meant Parish schools?

A. Yes, sir, that's right.

[fol. 94] Q. When you stated you referred to the use of only the utilities as illustrative, do you think of any other

services you get in the Post from the State and Parish or any other local authority?

A. Not offhand.

Q. You can't think of one and in fact there isn't any other, is there?

A. Not that I can think of.

Q. You have your own fire department?

A. Yes, sir.

Q. And, of course, you have your own police protection?

A. Yes, sir.

Q. You have everything that could be offered by the Parish, the State, and Municipality, that you conduct yourself inside the limits of the Post?

A. Yes, sir.

Mr. O'Quin: That is all.

Mr. Yancey: I have nothing else.

Mr. Cashio: That is all.

(Witness excused.)

(Signature waived.)

[fol. 95] *Duly sworn to by Ray J. Hanrahan, jurat omitted in printing.*

[fol. 102]

IN THE TWENTY-SIXTH JUDICIAL DISTRICT COURT

BOSSIER PARISH, LOUISIANA

No. 19,044

NATURAL GAS AND OIL CORPORATION

—VS—

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 19,628

INTERSTATE OIL PIPE LINE CO.

—VS—

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

No. 20,236

MISSISSIPPI RIVER FUEL CORPORATION

—VS—

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR

NOTE OF EVIDENCE—March 26, 1959

Evidence Adduced on the trial of the above entitled and numbered causes before His Honor, Frank M. Dougherty, Acting Judge of the Twenty-sixth Judicial District Court in and for Bossier Parish, State of Louisiana, at Benton, Louisiana, on the twenty-sixth day of March, A. D. 1959.

Reported by: Miss Hazel Autrey, Court Reporter.

[fol. 103] Appearances:

Blanchard, Goldstein, Walker & O'Quin, By Leon O'Quin, Counsel for: Interstate Oil Pipe Line Company.

Cook, Clark, Egan, Yancey & King, By Clarence Yancey, Counsel for: Natural Gas & Oil Corporation.

Ferdinand A. Cashio, Assistant Attorney General of Louisiana, Counsel for: W. E. Waggonner, Sheriff and Ex-Officio Tax Collector.

[fol. 104]

Tried.
March 26, 1959
at
Benton, Louisiana

Mr. O'Quin: If the Court please, we have what is actually three cases here involving in substance the same point of law. The question is the assessment for ad valorem tax purposes of property situated in Barksdale Field, one having to do with a pipeline, and the other other property of another corporation.

What we would like to do, because these cases don't—one would go to the Court of Appeal, and I think the other two would go to the Supreme Court. For that reason, we do not wish to consolidate them, even for trial, but we are going to ask the Court to consider, in rendering the opinion, the documents that are offered, to consider them in both cases.

In the case of Interstate Oil Pipeline Company versus the Sheriff of the Parish of Bossier, No. 19,628, I wish to offer the admissions of fact for the purpose of this action which has been signed by counsel for plaintiff and defendant.

The Court: Let the offering be filed.

(Filed in evidence, marked by the Clerk.)

Mr. O'Quin: This will be the admission only. Next, I wish to offer a plat of survey showing the location of the

pipelines of Interstate Oil Pipeline Company as the same [fol. 105] were situated on January 1, 1953, which is identified as Interstate Exhibit No. 1.

The Court: Let the exhibit be filed.

(Filed in evidence, marked Interstate Exhibit No. 1 by the Clerk.)

Mr. O'Quin: Next, I wish to offer copy of letter addressed to W. E. Waggoner, Tax Collector, dated December 30, 1953, setting forth the payment of taxes involved in this case as made under protest, and notice of intention to file suit, signed by W. M. Waller, Deputy Tax Collector, the instrument being filed as Exhibit Interstate 2.

The Court: Let the exhibit be filed.

(Filed in evidence, marked Interstate Exhibit No. 2 by the Clerk.)

Mr. Cashio: I might say at this point, if the Court please, that the defendant has admitted the payment of these taxes under protest in its answer.

The Court: Thank you.

Mr. O'Quin: I wish next to file a copy of the conveyance of properties forming the Barksdale Air Field, executed by the City of Shreveport in favor of the United States, dated November 8, 1930, recorded in Conveyance Book 102, page 472, Records of the Parish of Bossier, which is identified as Interstate Exhibit 3.

The Court: Mr. O'Quin, are you filing an original there?

Mr. O'Quin: That is a copy, Your Honor.

[fol. 106] The Court: I was going to give you leave to substitute. Let it be filed.

Mr. Cashio: It is a certified copy?

Mr. O'Quin: That was made by the abstract company.

Mr. Cashio: Here in Bossier?

Mr. O'Quin: Yes.

Mr. Cashio: We have no objection, if it please the Court.

The Court: Let it be filed.

(Filed in evidence, marked Interstate Exhibit No. 3 by the Clerk.)

Mr. O'Quin: Next, I wish to file a certified copy of the Deed from the State of Louisiana to the United States, dated August 30, 1930, recorded in Conveyance Book 102, page 469, records of the Parish of Bossier, identified as Interstate Exhibit 4.

The Court: Let the offering be filed.

(Filed in evidence, marked Interstate Exhibit No. 4 by the Clerk.)

Mr. O'Quin: I wish to file a certified copy of the Deed from the Board of Commissioners of the Bossier Levee District to the United States of America, dated February 5, 1930, recorded in Conveyance Book 102, page 467, Records of the Parish of Bossier, identified as Interstate Exhibit No. 5.

The Court: Let it be filed.

(Filed in evidence, marked Interstate Exhibit No. 5 by the Clerk.)

[fol. 107] Mr. O'Quin: I wish to file next the testimony of Colonel Alfred J. Hanlon, Jr., as taken by deposition de bene esse on January 26, 1959, the original of which has been returned in the record.

The Court: Let the deposition be filed.

(Filed in evidence, marked Interstate Exhibit No. 6 by the Clerk.)

Mr. O'Quin: That concludes Case No. 19,628.

[fol. 112] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 113]

IN THE COURT OF APPEALS, SECOND CIRCUIT OF THE STATE OF LOUISIANA

Nos. 9888, 9889, 9890

NATURAL GAS AND OIL CORPORATION, Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee

---

MISSISSIPPI RIVER FUEL CORPORATION, Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee

---

HUMBLE PIPE LINE COMPANY, Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee

---

Appealed from
Twenty-Sixth Judicial District Court of Louisiana
in and for the Parish of Bossier

Hon. O. E. Price, Judge

Shotwell & Brown; Oliver, Digby & Fudickar; Cook, Clark, Egan, Yancey & King, Attorneys for Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, Plaintiffs-Appellants.

Blanchard, Goldstein, Walker & O'Quinn, Attorneys for Humble Pipe Line Company, Plaintiff-Appellant.

Jack P. F. Gremillion, Attorney General of Louisiana; Carroll Buck, First Assistant Attorney General of Louisiana; Ferdinand A. Cashio, Assistant Attorney General of Louisiana, Attorneys for Defendant-Appellee.

Hon. George W. Hardy, Jr., Hon. Edward L. Gladney, Hon. H. W. Ayres, Hon. James E. Bolin, Judges.

[fol. 114] OPINION—February 7, 1963

AYRES, J.

In each of these cases, the respective plaintiff seeks to recover certain ad valorem taxes assessed and levied against it by the State of Louisiana and by its various taxing authorities, in Ward Two of Bossier Parish, Louisiana. The taxes which are sought to be recovered, in each instance, were paid by the plaintiff under protest, and thereafter these suits were instituted under the provisions of LSA-R.S. 47:2110.

The factual situation, identical as to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, is to be distinguished from that of the plaintiff, Humble Pipe Line Company. These differences will be noted in the course of this opinion. The same legal principles are, however, generally applicable to all three cases. The record made up on the trial consists of the testimony of Col. Alfred J. Hanlon, Jr., Base Commander of Barksdale Air Force Base, who appeared for the plaintiffs, taken by deposition pursuant to stipulation of the parties, and various documentary offerings and stipulation of counsel.

From a judgment rejecting its demands, each plaintiff has appealed to this court.

The United States of America acquired from the State of Louisiana, City of Shreveport, and the Board of Commissioners of the Bossier Levee District, in the year 1930, certain lands in Bossier Parish approximating 22,000 acres. The conveyances so made were admittedly donations. Shortly thereafter, Barksdale Air Force Base was constructed on a relatively small portion of that acreage and, since that time, the Government has continuously maintained and operated said base for military purposes.

Pertinent to the positions of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, it may be pointed out that, in 1951, it was determined that certain of the acreage within the total area acquired by the United [fol. 115] States of America, as aforesaid, was being drained of minerals through wells drilled on privately owned adjacent lands; consequently, jurisdiction over 2,060 acres thereof was transferred to the Department of Interior with the provision there is to be no interference with the primary use of Barksdale Air Force Base.

By virtue of a lease of said property, executed by the Department of Interior, Natural Gas and Oil Corporation drilled certain wells productive of oil and gas, which wells, with their equipment, have been assessed and levied upon for ad valorem tax purposes. (Natural Gas and Oil Corporation subsequently merged with the Mississippi River Fuel Corporation.)

As concerns the plaintiff, Humble Pipe Line Company, the taxes herein involved were imposed against two interstate oil trunk pipelines, of 8-inch and 10-inch diameters, respectively, belonging to this plaintiff and extending a distance of 2.91 miles within the acreage acquired by the United States of America, as aforesaid, which, however, are located not within the area covered by the oil, gas and mineral leases held by the other two plaintiffs, but within the developed area, or military reservation proper.

The sole question which is presented in these cases is whether or not the State of Louisiana, and its taxing authorities of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the respective plaintiffs, used and maintained by them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base. The plaintiffs contend that the State of Louisiana ceded its right to so tax such property within the said military reservation to the Federal Government and, consequently, now lacks such power. At the very foundation of their claim, of course, is Article I, Section 8, Clause 17, of the Constitution of the United States, and Act 12 of 1892 of the Louisiana Legislature, embodied in LSA-R.S. 52:1. The constitutional provision reads as follows:

[fol. 116] "The Congress shall have Power * * *

"To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to *exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;* * * *" (Emphasis supplied.)

The aforesaid legislative provision relied upon by the plaintiffs to support their claim of the State's cession of the power to tax in these instances reads thus:

"The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

"The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."

Of the total acreage acquired by the United States of America, in the year 1930, as aforesaid, the cantonment area of Barksdale Air Force Base covers about 1,000 to 1,500 acres, and an additional improved part of the base, which includes the airfield proper, comprises another 1,500 acres, leaving about 19,000 acres of unimproved land known as the East Reservation. It is in this last-mentioned area that Natural Gas and Oil Corporation and Mississippi River Fuel Corporation have their physical properties against which the ad valorem taxes have been assessed and levied.

Moreover, in *Murphy Corp.* v. *Fontenot* (S. Ct. 1954), 225 La. 379, 73 So.2d 180, 183, it was established that this land was set apart from the land used for the governmental purposes of the Air Force Department; in fact, there was a dividing fence between the oil field and the Air Force Base. The court there said:

> [fol. 117] "These private owners were granted the right of use and control over all instrumentalities, owner and constructed by them, such as drilling machines, towers, tanks and pipe lines for their private commercial purposes to explore for oil and gas and to reduce such to private ownership."

In other words, the instruments employed by the private businesses, Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, were entirely and exclusively within their own control. It might be emphasized that the land covered by the lease operations is only remotely related to the primary use of the reservation for military purposes. This was made so obvious in the *Murphy Corporation* case, supra, that the late Justice Moise, as organ of the court, found it necessary to say:

> "... the land leased was not to be used for the erection of a fort, magazine, arsenal, dockyard or other needful buildings for military purposes."

The tax was not one imposed upon, or in any way affecting, property or functions of the Federal Government. In *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U.S. 525, 5 S.Ct. 995, 1002, 29 L.Ed. 264, 269, the Supreme Court of the United States clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of its own powers. Thus, it was stated:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings,

with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the [fol. 118] sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over other places within her limits.*" (Emphasis supplied.)

Plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation contend that neither the *Murphy Corporation* case, supra, certiorari denied by Supreme Court of the United States, 348 U.S. 831, 75 S.Ct. 54, 99 L.Ed. 655, nor *Mississippi River Fuel Corporation* v. *Fontenot* (CCA 5), 234 F.2d 898, certiorari denied by Supreme Court of United States, 352 U.S. 916, 77 S.Ct. 213, 1 L.Ed. 2d 122, is appropriate because they involved gas gathering and severance taxes decided on principles not applicable to these cases. Despite the differences in the types of taxes involved, the principles as regards the jurisdiction of the State to tax are the same. It may be noted, too, that the provisions of the leases in the instant cases, imposing obligations on the lessees to pay taxes, are substantially the same as contained in the leases concerned in the cited cases.

The language employed in the *Murphy Corporation* case is pertinent to the issues here. There, the court stated:

"The acceptance . . . by the Secretary of War states that the property is to be used for military purposes. When the Secretary of War transferred certain portions of the land to the Department of the Interior, and the Commandant of the Air Base certified that such leases would not interfere with the governmental operations of the Air Base, we had a splendid affirmative of the position taken by the State.

"In the operation of the oil field, the lessees were not militarily engaged. The fugitive oil and gas when captured did not belong to the Federal government but to private owners. No severance tax is levied against the Government nor is there any tax levied on the lands or the instrumentalities of the Federal Government."

Similarly, in these instances, there is no tax levied against the Federal Government or any of its instrumentalities or property. In this connection, what was said by the Supreme [fol. 119] Court of the United States in *Esso Standard Oil* v. *Evans* (U. S. v. Evans), 345 U.S. 495, 73 S.Ct. 800, 97 L.Ed. 1174, is pertinent, to-wit:

"The Constitution does not extend sovereign exemption from state taxation to corporations or individuals contracting with the United States merely because their activities are useful to the government."

As to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, the provisions of the lease are the law of the case (*Murphy Corp.* v. *Fontenot*, supra). Under the terms of the lease agreement, in Section 2, under Rentals and Royalties, (7) (K), the lessee is required

"To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States."

The contentions of Murphy Corporation in the cited case were disregarded in the following language:

"To follow the plaintiffs' contentions, we must give no effect to the mandatory provisions of Section 2(7) (K) of the lease in question, and we must likewise say

that such a provision together with the pertinent authorities on Constitutional questions by the courts are mere abstractions affording no real protection."

Moreover, in the *Mississippi River Fuel Corporation* case, supra, answering the taxpayer's contentions with regard to the lease provision, the Fifth Circuit, Court of Appeal, said:

"Putting to one side all the refinements which have attended the long struggles over jurisdiction, as instanced in the cases, and over the effort to throw over private operations the protective mantle of governmental immunity, all that is presented for decision in this case is whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable under the general laws of the state for the severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use. For the same reason that the statute under which the exaction is [fol. 120] made is a general excise statute, not directed at any particular person or property but at all persons who are severers, it cannot be said that the provision in the lease obliging the lessees, as one of the considerations for it, to pay the taxes, was not fully effective."

These plaintiffs in the instant cases cannot clothe themselves with the mantle of governmental immunity any more so than could the Murphy Corporation in the cited case in the State Court, or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Their sole claim to immunity is the fact that their physical properties are situated within the enclosure of Barksdale Air Force Base. This can afford them no such immunity. The lease provisions are effective to insure payment by these plaintiffs of the ad valorem taxes imposed upon their physical properties.

The circumstances evidence the intention of the United States not to accept exclusive jurisdiction over the area donated for Barksdale Air Force Base. In *International Business Machines Corporation* v. *Ott* (S.Ct., 1956), 230 La. 666, 89 So.2d 193, there was involved a question of whether or not the State could levy ad valorem taxes on certain business machines owned by the plaintiff, but leased to the Federal Government, and situated at a site over which jurisdiction had been ceded to the United States. As organ of the court, on rehearing, Chief Justice Fournet said:

> "The view of presumed acceptance of ceded jurisdiction, which was followed in certain cases, was subjected to a thorough re-examination in two suits presented to the Court in the term beginning October, 1937: James v. Dravo Contracting Company, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155, and Silas Mason Co. v. Tax Commission, 302 U.S. 186, 58 S.Ct. 233, 82 L.Ed. 187."

In the *Dravo* case, immunity from a West Virginia "annual privilege tax" based on gross receipts was sought by a Pennsylvania contractor with respect to sums collected [fol. 121] under contracts with the United States Government for the building of structures within West Virginia. One of the issues was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government, and stated:

> *"'The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system.'"*

In the *Silas Mason* case, a similar tax was involved and the question there was whether certain of the areas in which

the contractors' work was performed were within the exclusive jurisdiction of the United States, in view of the acquisition by the United States and the provisions of the State statute. The court there stated:

> *"The mere fact that the Government needs title to property within the boundaries of a State * * * does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction."*

Our State Supreme Court ultimately concluded, in the *International Business Machines* case, supra, that the acceptance of services furnished by the City of New Orleans to the sites in question manifested an intent on the part of the Government not to accept exclusive jurisdiction. The court made this appropriate observation:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant. In the instant case it was shown that various services (fire protection, sewerage, water and drainage facilities, police traffic regulation) furnished by the City of New Orleans were used by the various locations, and that the United [fol. 122] States has failed to indicate an intention to exercise control in those respects; in fact, the acceptance of such services manifested a contrary intent on the part of the Federal Government. Silas Mason Co. v. Tax Commission of Washington, supra. We think, upon further analysis and study, that the rule of Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455, 456, 74 L.Ed. 1091, it [sic] not to be applied to the instant factual situation. In that case the U. S. Supreme Court was careful to point out that Camp Pike case directly within the words, '"forts, magazines, arsenals, dockyards, and other needful buildings"' of the constitutional provision, which decreed '"exclusive legislation in all cases whatsoever" over a place so purchased for such a purpose.'"

The testimony shows conclusively that, just as in the *International Business Machines Corporation* case, supra, the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the State and Parish authorities for these services. Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects.

Although the land traversed by plaintiff Humble Pipe Line Company's lines is not a part of the East Reservation of Barksdale Air Force Base the portion of which is covered by the oil, gas and mineral lease, or leases, involved in the companion cases, we may point out that the lease provision, Section 2, under Rents and Royalties, (7) (K), which imposed upon the lessee the obligation to pay all State taxes, evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base. This plaintiff cannot clothe itself with the mantle of governmental immunity any more [fol. 123] so than could the Murphy Corporation in the cited case in the State Court or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Its sole claim to immunity is the fact its physical property is situated within the enclosure of Barksdale Air Force Base. This can afford it no such immunity.

Plaintiff Humble Pipe Line Company is vested with a servitude across the lands of Barksdale Air Force Base under which its lines pass. The existence of this real right evidences an imperfect ownership of the Government in the area traversed by the pipelines. Thus, as to the area subjected to the servitude, the Government possesses only the naked ownership.

LSA-C.C. Art. 490.

In the case of *S. R. A.* v. *Minnesota* (1946), 327 U.S. 558, 90 L.Ed. 851, Mr. Justice Reed, as the author of the opinion, said:

> "This Court apparently has never directly passed upon the effect on federal sovereignty of the property's transfer by the United States to private hands.
>
> "There was no requirement in the act of cession for return of sovereignty to the state when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, § 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. *As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power.*" (Emphasis supplied.)

In that case, there was held to be a relinquishment of jurisdiction despite the fact that there was only an execu- [fol. 124] tory contract of sale with title remaining in the Government. Here, either the Government took the lands donated to it subject to the plaintiff's existing right of servitude, or a grant of right of way was made to the plaintiff by the Government. The record does not show which was the case. Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the *S. R. A.* case, it relinquished same.

For the aforesaid reasons, the conclusion appears inescapable that the taxes imposed in these instances are against

private property owned and possessed by plaintiffs, under their control and used by them in the conduct of their commercial businesses; that the taxes are not levied against the United States of America, nor against any of its property or against any of its agencies or instrumentalities; and that the State and its taxing authorities have jurisdiction to levy and impose such taxes.

The judgments appealed are accordingly affirmed at the cost of each of the plaintiffs in its respective suit.

Affirmed.

Rehearing refused April 1-1963.

Harold L. Booth, Clerk, Court of Appeal.

Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 125]

IN THE COURT OF APPEAL, SECOND CIRCUIT
OF THE STATE OF LOUISIANA.

No. 9888 Natural Gas & Oil Corp. vs. W. E. Waggonner, Sheriff

No. 9889 Mississippi River Fuel Corp. vs. W. E. Waggonner, Sheriff

No. 9890 Humble Pipeline Co. vs. W. E. Waggonner, Sheriff

(CONSOLIDATED)

On Application for Rehearing
by Plaintiffs-Appellants

ORDER DENYING PETITION FOR REHEARING—April 1, 1963

Rehearing Refused

April 1, 1963

HAROLD L. BOOTH
Clerk, Court of Appeal

[fol. 129] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 135]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 46706

HUMBLE PIPE LINE COMPANY, Plaintiff-Appellant,

vs.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Defendant-Appellee.

APPLICATION FOR WRIT OF CERTIORARI OR REVIEW—
Filed April 10, 1963

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court, State of Louisiana:

Humble Pipe Line Company, petitioner herein,* respectfully petitions this Court for a writ of certiorari or review (as prescribed by LSA-R.S. 13:4450 and the Rules of this Court) to review the final decision and judgment of the Court of Appeal, Second Circuit, State of Louisiana, rendered February 7, 1963, in the above styled case, designated No. 9890 upon the docket of that court, in which a motion for a rehearing was refused by the court on April 1, 1963; and for cause for the granting of such writ shows:

I.

Statement of the Case.

This is an action brought by plaintiff pursuant to the provisions of LSA-R.S. 47:2110 to recover ad valorem taxes

* By charter amendment effective July 31, 1961, the corporate name of plaintiff was changed from Interstate Oil Pipe Line Company to Humble Pipe Line Company, and that name substituted in this proceeding by order of the District Court dated October 4, 1962.

in the sum of $1,315.35 (with interest thereon) paid under protest. The demands of plaintiff were rejected by judgment of the trial court and that judgment affirmed on appeal.

[fol. 136] The taxes involved were ad valorem taxes levied and assessed for the year 1953** on behalf of the State of Louisiana and political subdivisions thereof having general authority to tax in Ward Two, Bossier Parish, Louisiana, upon valuations (as fixed by the Louisiana Tax Commission) of two trunk pipelines of plaintiff extending a distance of 2.91 miles within the limits of Barksdale Field, a military post or establishment of the United States described in the petition as follows:

> "That there is within the geographical limits of the Parish of Bossier, Louisiana, a federal area known and identified as Barksdale Field which is (and was at all times referred to herein) a military post or establishment of the United States consisting of lands substantially all of which were conveyed to the Federal Government by instruments executed in the year 1930, recorded in Conveyance Book 102, pages 467, 469 and 472, Records of the Parish of Bossier.
>
> "That the conveyances referred to—through which the lands described were acquired by the United States—were executed with the consent and approval of the State of Louisiana in accordance with the provisions of the laws of the State relating thereto, under the terms of which exclusive jurisdiction of the lands conveyed was ceded or granted to the United States except in respect to the service of process issuing under State authority.
>
> "That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described completely ousted all jurisdiction and authority of the State and its political subdivisions within such area

** The question of the validity of taxes of subsequent years is consequently indirectly involved.

(including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon—no such authority having been conferred by Act of Congress."

By stipulation of fact forming part of the record herein, it is admitted that,

"The tracts traversed by the pipe line of Interstate Oil Pipe Line Company within the limits of Barksdale Field (as shown upon Exhibit 'Interstate' 1) included no part of the lands described in Public Land Order No. 701 referred to in the decision of the Supreme Court of the State in the case of *Murphy Corporation* v. *Fontenot, 73 So. 2d 180, 225 La. 379,* and have been used at all times relevant herein exclusively for military purposes."

[fol. 137] and that,

"Interstate Oil Pipe Line Company is engaged solely in the transportation of crude oil—primarily in interstate commerce; is not engaged in the production of oil, gas or other minerals; has no interest whatever in any oil, gas or other minerals produced from any lands within the limits of Barksdale Field and no affiliation with any person or corporation engaged in such production, none of which has ever entered its pipe lines traversing the field limits."

II.

Issues.

The sole issue before the Court is the question of the territorial jurisdiction of the State and its subdivisions to impose ad valorem taxes upon the property of plaintiff situated entirely within the Federal enclave of Barksdale Field and the consequent validity vel non of the taxes involved.

III.

Questions of Law.

The question of law involved are:

(a) The effect of Act No. 43 of the Legislature of Louisiana for the year 1928 amending Section 12 of Article IV of the State Constitution to authorize the State and its political corporations to donate property to the United States for military uses, and Act No. 12 of the Legislature of Louisiana of 1892 ceding to the Government of the United States exclusive jurisdiction over property purchased or "otherwise" acquired by it—as evidence of the consent of the State to the acquisition by the United States of the lands comprising Barksdale Field which, under the provisions of the Constitution of the United States (Article 1, Par. 8, Cl. 17), if then obtained, vested in the United States exclusive "legislation" over the area.

[fol. 138] (b) The application of the rule that private personal property within an army camp or post, the lands for which were acquired by the United States with the consent of the legislature of the state in which such lands are situated, cannot be subjected to state taxation in view of the provisions of Article 1, Par. 8, Cl. 17, of the Constitution of the United States—as established in the landmark decision in *Surplus Trading Company* v. *Cook*, 281 U.S. 647, 74 L. ed. 1091.

(c) The application of the rule that acceptance by the United States of the session to it of exclusive jurisdiction over lands acquired with the consent of the legislature of the state in which such lands are situated is presumed, in the absence of evidence of a contrary intent—as established in *Silas Mason Company, Inc.* v. *Tax Commission of Washington*, 302 U.S. 186, 82 L. ed. 187, and *International Business Machines Corporation* v. *Ott*, 89 So. 2d 193, 230 La. 666.

(d) The question as to whether or not any of the facts mentioned in the opinion of the Court of Appeal herein considered within the proper application of the *International*

Business Machines decision has evidenced an intention of the United States not to accept exclusive jurisdiction over any part of the Barksdale Field area over which plaintiff's pipelines extend.

(e) The question of the irrelevancy of all facts stated and legal conclusions reached in the decision in *Murphy Corporation* v. *Fontenot*, 225 La. 379, 73 So. 2d 180.

IV.

Assignment of Errors.

It is submitted that the Court of Appeal in its opinion of February 7, 1963, erred in the following respects:

1. In not holding that the acceptance by the United States of the transfer of exclusive jurisdiction over the [fol. 139] lands forming Barksdale Field (acquired with the consent of the State of Louisiana) will be presumed in the absence of evidence of a contrary intent (*International Business Machines Corporation* v. *Ott*, 89 So. 2d 193, 230, La. 666); that as to the lands involved in this action there has been no evidence of any such contrary intent and under the rule announced in *Surplus Trading Company* v. *Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. ed. 1091, private personal property within the limits of the Field area involved herein cannot be subjected to State and Parish ad valorem taxation.

2. In regarding (opinion p. 8) the Supreme Court of this State as holding in the case of *International Business Machines Corporation* v. *Ott*, 230 La. 666, 89 So. 2d 193, that the acceptance by the United States of services (any services) furnished by the taxing authority to the site of a governmental operation manifests "an intent on the part of the government not to accept exclusive jurisdiction" over the site, when in that case the decision of the court was based solely upon the fact that the United States had failed *"to indicate an intention to exercise control"* in respect to services furnished by the city described as "fire protection, sewerage, water and drainage facilities, public traffic regulation."

3. In not holding that the uncontradicted testimony of Col. Hanlon (Post Commander) establishes that all operations and functions of every kind performed within the limits of Barksdale Field—with the possible exception of the area described in the case of *Murphy Corporation* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, (not involved in this action)—are supervised and controlled by Air Force personnel officers exclusively; that the delivery of utilities to the Post (no other services being furnished) is completed or terminated at the gate or outer limits of the field and that the exclusive supervision and control of the Air Force within the limits of the Field (a fort, magazine, arsenal, etc., within the exact meaning of Article 1, Par. 8, Cl. 17 of the Constitution of the United States) has at all times [fol. 140] indicated an intention to exercise exclusive jurisdiction over the Post Area within the rule of decision announced in *International Business Machines Corporation* v. *Ott*.

4. In not holding that the precise question at issue in this case is the question of territorial jurisdiction within the limits of Barksdale Field and that the fact that children of parents residing upon the Post may attend public schools of the Parish (for which the Parish is reimbursed by the Government) fails to evidence any intention on the part the Air Force personnel not to continue exclusive jurisdiction within the limits of the Post in every sense of that term—a factual situation in direct contrast to that presented in *Silas Mason Company* v. *Tax Commission*, 302 U.S. 186, 58 S.Ct. 233, 82 L.ed. 187, wherein the State of Washington conducted schools within the Federal area.

5. In holding in respect to the Barksdale Post area traversed by the right of way for plaintiff's pipelines that:

> "Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the S. R. A. case, it relinquished same" (opinion p. 11).

when in the case of *U. S.* v. *Unzeuta*, 281 U.S. 144, 74 L. ed. 761, the Supreme Court of the United States expressly held that the grant of a right of way to a railroad traversing Fort Robinson (in the State of Nebraska), although contemplating permanent use, did not alter the fact that the maintenance of the jurisdiction of the United States over the right of way as being a part of the reservation might be necessary in order to secure the benefits intended to be derived from the reservation—and when it has been admitted herein that the agents and employees of the Pipeline Company have never been permitted upon the area traversed by its pipelines for the purpose of inspection or maintenance except when accompanied by military guard or escort.

[fol. 141] 6. In regarding certain holdings of the Supreme Court of the United States as set forth in the opinion rendered in the case of *James* v. *Dravo Contracting Company*, 302 U.S. 134, 58 S.Ct. 208, 82 L. ed. 155—relating solely to the phase of that case involving the question of whether the tax imposed was invalid as laying a burden upon the operations of the Federal Government—as applicable to the distinctly separate phase of that case presenting the question of whether or not the State had territorial jurisdiction to levy the tax—as evidenced by the following statement made at page 11 of the opinion of the Court as though relevant to the issues in this cause, which involve solely the question of territorial jurisdiction to tax:

> "One of the issues [referring to the Dravo case] was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government. * * * "

7. In arriving at conclusions mentioned herein which, if accepted and applied, make the acquisition of exclusive jurisdiction by the United States over any "magazine,"

"arsenal" or military establishment a matter of practical impossibility.

V.

Brief of Errors Assigned.

We submit that in the decision rendered herein on February 7, 1963, the Court of Appeal erred in the respects specified, and we shall attempt herein to briefly explain our contentions with regard to the matters specified as error in the order set forth in the assignment.

Assignment 1.

We wish to refer particularly to the fact that the pipe lines of plaintiff traverse no part of the area included in the oil, gas and mineral lease involved in the case of *Murphy Corporation* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, and that [fol. 142] the case presented on behalf of Humble Pipe Line Company should not be confused in any respect with the cases of the Mississippi River Fuel Corporation and Natural Gas & Oil Corporation, whose properties are located within that area and whose cases—together with that of this applicant—have been disposed of in the one opinion of February 7, 1963, of the Court of Appeal.

Again, it is fundamental that it be recognized that the sole contention of Humble is that Barksdale Field was acquired by the United States with the consent of the State of Louisiana (Sec. 12, Art. 4, State of Louisiana Constitution), which consent under the provisions of Article 1, Par. 8, Cl. 17, of the Constitution of the United States conferred unto the United States exclusive jurisdiction over the lands comprising the Post area and further that the State by Act No. 12 of the Legislature of 1892 expressly ceded such exclusive jurisdiction without reservation. All other questions of the right of the State to tax property (when not acquired with the consent of the State or in respect to which exclusive jurisdiction has not been ceded) and questions of the right to tax instrumentalities or agencies of the United States are totally inapposite.

In the leading case of *Surplus Trading Company* v. *Cook*, 281 U.S. 647, 74 L. ed. 1091, the Supreme Court held that,

> "Where lands for forts, magazines, arsenals, dockyards, etc., are purchased by the United States with the consent of the state legislature, the jurisdiction theretofore residing in the state passes to the United States in virtue of Art. 1, § 8, cl. 17, of the Constitution, which prescribes that Congress shall have exclusive authority over places so acquired" (syl. par. 6).

There has never been any departure from the principles of that decision, which are expressly recognized in *International Business Machines Corporation* v. *Ott*, 89 So. 2d 193, 230 La. 666, although held inapplicable under the particular factual situation presented in that case, which was regarded as evidencing an intention on the part of the Federal Government not to accept exclusive jurisdiction [fol. 143] over the buildings involved. The court, however, recognized the rule that the acceptance of exclusive jurisdiction will be presumed in the absence of evidence to the contrary and distinguished the facts of the Surplus Trading Company case as follows:

> "We think, upon further analysis and study, that the rule of Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455, 456, 74 L.Ed. 1091, is not to be applied to the instant factual situation. In that case the U. S. Supreme Court was careful to point out that Camp Pike came directly within the words '"forts, magazines, arsenals, dockyards, and other needful buildings"' of the constitutional provision, which decreed '"exclusive legislation in all cases whatsoever" over a place so purchased for such a purpose.'" (230 La. 702.)

Barksdale Field is notoriously and typically a "fort", "magazine" or "arsenal" within the constitutional provision, governed solely by the Air Force of the United States, and there has been no evidence of any character that the Air Force has failed at any time or in any sense to exercise exclusive jurisdiction over the entire area involved in this suit as pointed out in the remaining assignments of error herein.

Assignment 2.

The decision of the Supreme Court of this State in the *International Business Machines* case was bottomed upon the decision of the Supreme Court of the United States in *Silas Mason Co. v. Tax Commission*, 302 U.S. 186, 58 S.Ct. 233, 82 L. ed. 187, in which the court found that the cooperation of the state of Washington and the Federal Government in connection with the Grand Coulee Dam project on the Columbia River made it clear that the Federal Government contemplated and intended the continued existence of state concurrent jurisdiction. In referring to the statute invoked and the evidence manifesting such intent, the court said:

> "Not only do we find no violence done to Federal right or frustration of Federal intent by the State's construction of its statute, but the evidence is clear that the Federal government contemplated the continued exist- [fol. 144] ence of State jurisdiction consistent with Federal functions and invited the cooperation of the State in providing an appropriate exercise of local authority over the territory." (p. 207, U.S.)

In the *International Business Machines* case, our Supreme Court said:

> "The fact that the legislature of a state has ceded exclusive jurisdiction is not the controlling consideration; reference must be held to the circumstances of the case which may well be evidence of intention on the part of the United States not to accept the grant."

It then found that the Federal buildings in the City of New Orleans in which the plaintiff's equipment was located received the same municipal protection and services that were furnished private buildings and structures without anything to indicate an intention on the part of the Government "to exercise control in those respects", and held that the acceptance of the municipal benefits under those circumstances manifested a contrary intent on the part of the Federal Government.

The crux of the decision was the failure of the Government to exercise any manner of control over the services and benefits furnished by the municipality—not the mere fact that some service was obtained from outside the buildings in question.

Assignment 3.

The case presented with regard to the occupancy of the separate buildings in the City of New Orleans and the circumstances surrounding the activities conducted within the limits of Barksdale Field are totally unlike and as far apart in every relevant respect as can possibly be imagined. The Federal buildings in New Orleans are occupied just as all other buildings are occupied and with the same reliance upon municipal services, fire protection and police. On the other hand, it is common knowledge—everyone knows and the evidence in this case conclusively shows—that the Air Force personnel exercise exclusive jurisdiction within the [fol. 145] limits of Barksdale Field involved in this case, which cannot even be entered without permission. The Post has its own fire and police protection; utilities are purchased and delivered at the Post gates for distribution solely under Post control. The intention of the Air Force to exercise exclusive jurisdiction within the Field is inescapable. In fact, if it does not exercise such jurisdiction, then we cannot imagine any manner in which such exercise can be practically accomplished.

We concede the rules announced in the *I.B.M.* case, but submit that the application of those rules in this case must result in the recognition of the exclusive jurisdiction of the United States within the limits of Barksdale Field.

Assignment 4.

In the opinion of the Court of Appeal herein, reference is made to the fact that children of parents residing upon the Post property attend the public schools of Bossier Parish and it is said that the fact that the "Government pays to the Parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less

dependent upon the State and Parish authorities for those services."

The question before the Court, however, is solely that of jurisdiction within the limits of the Post properties and whether or not the Federal Government has done anything which would indicate that it did not intend to exercise exclusive jurisdiction within those limits. We submit that the fact that children of servicemen living upon the Post property attend schools of the Parish situated off the Post has no more to do with the exercise of exclusive jurisdiction within those limits than the fact that the wives of officers living there shop at Goldring's.

Assignment 5.

The Court of Appeal has held in effect that the Federal Government could not have exclusive jurisdiction over the [fol. 146] rights of way of plaintiff's pipe lines situated upon the Post property simply because the Government is regarded as having an "imperfect title" to the strips upon which the pipe lines are located. In reaching that conclusion, the Court ignored the decision in *U. S. v. Unzeuta*, 281 U.S. 138, 74 L. ed. 761, in which the identical question was considered at length in reaching an opposite conclusion. The decision of the Supreme Court in that case is stated in the first paragraph of the syllabus as follows:

> "The cession by the state of Nebraska to the United States of jurisdiction over the Fort Robinson Military Reservation includes jurisdiction over the right of way of the Chicago & Northwestern Railway Company across such reservation, notwithstanding the proviso in the act of cession that the jurisdiction thereby ceded shall continue no longer than the United States shall own and occupy such reservation, and that the state shall retain concurrent jurisdiction with the United States so far as that civil process in all cases, and process against any person charged with crime committed within the state, may be executed therein in the same way and manner as if such jurisdiction had not been ceded."

In the course of the opinion, the Court said:

> "The mere fact that the portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction. Rights of way for various purposes, such as for railroads, ditches, pipe lines, telegraph and telephone lines, across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States. In Benson v. United States, 146 U.S. 325, 330, 36 L. ed. 991, 994, 13 Sup. Ct. Rep. 60, the jurisdiction of the Federal court was sustained with respect to an indictment for murder committed on a portion of the Fort Leavenworth Military Reservation in Kansas which was used for farming purposes. In Arlington Hotel Co. v. Fant, supra, the jurisdiction of the United States was upheld as to the portion of the reservation there in question which had been leased for use as a hotel. While the grant of the right of way to the railroad company contemplated a permanent use, this does not alter the fact that the maintenance of the jurisdiction of the United States over the right of way, as being within the reservation, might be necessary in order to secure the benefits intended to be derived from the reservation." (144, 145, U.S.)

In this case, the Air Force did exercise jurisdiction over the rights of way in question, and that fact is admitted of record:

> "The public has at no time been permitted freedom of access to any portion of the lands within the limits of Barksdale Field traversed by the pipe lines referred [fol. 147] to herein and the agents and employees of Interstate Oil Pipe Line Company have never been permitted upon those premises for the purposes of inspection and maintenance of said lines except when accompanied by military guard or escort in the presence of whom all such work must be performed." (Admission No. 9).

Assignment 6.

In the course of the opinion herein, the Court of Appeal referred to the case of *James*, v. *Dravo Contracting Company*, 302 U.S. 134, 58 S. Ct. 208, 82 L. ed. 155, and holdings of the Supreme Court therein in a manner which we cannot interpret except as meaning that the Court regarded the references made as relating to the phase of that case involving the question of territorial jurisdiction to tax. The Court said (p. 8) that:

> "One of the issues was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government, and stated:
>
> "'"*The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system.*"'"

Actually, the *Dravo* case involved two distinct questions stated by Chief Justice Hughes as follows:

> "The questions presented are (1) whether the State had territorial jurisdiction to impose the tax, and (2) whether the tax was invalid as laying a burden upon the operations of the Federal Government." (p. 160, L. ed.)

With regard to the first question, the statute of the State of West Virginia relied upon by the taxpayer as evidencing the consent of the state to the Federal acquisition reserved to the state concurrent jurisdiction over the lands involved, which reservation the Supreme Court held to be valid and effective.

[fol. 148] "In the present case the reservation by West Virginia of concurrent jurisdiction did not operate to deprive the United States of the enjoyment of the property for the purposes for which it was acquired, and we are of the opinion that the reservation was applicable and effective." (p. 166, L. ed.)

After disposing of the first phase of the case in the manner stated, the Supreme Court then undertook (commencing at page 149, U.S.) the consideration of the question of the asserted invalidity of the tax on the ground that it laid a direct burden upon the Federal Government. All the holdings referred to in the opinion of the Court of Appeal quoted above are found in that portion of the opinion of the Supreme Court restricted to the latter question and the quotation from the opinion of the Supreme Court (p. 150, U.S.) relates directly to that question previously stated as follows:

"Is the tax invalid upon the ground that it lays a direct burden upon the Federal Government?" (p. 149, U.S.)

We submit that the Court of Appeal has mistakenly regarded statements of the Supreme Court of the United States made with regard to a question totally foreign to that presented herein as appropriate in this cause and that it was error to accept those statements as controlling issues herein in any respect.

A similar erroneous regard for or reliance upon statements made by the Supreme Court in a case presenting a totally different question from that presented herein appears from the following quotation from the opinion of the Court of Appeal commencing on page 4:

"In Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 5 S. Ct. 995, 1002, 29 L. ed. 264, 269, the Supreme Court of the United States clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of its own powers. Thus, it was stated:

"Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or im- [fol. 149] pair their effective use for the purpose designed. Such is the law with reference to all instrumentalities created by general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over other places* within her limits." (Emphasis supplied by the Court)

In that case the Supreme Court held that Fort Leavenworth had not been acquired by the United States with the consent of the state of Kansas and that consequently the jurisdiction of the Federal Government over the area was dependent upon the cession of jurisdiction by act of the legislature of that state, in which statute the right to tax the property of the plaintiff railway company had been validly reserved by the state.

"As already stated, the land constituting the Fort Leavenworth military reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a state; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission into the Union. It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post." (p. 539, U.S.)

In the case presented herein, the lands comprising Barksdale Field were acquired by the United States with the consent of the state of Louisiana, and further exclusive jurisdiction over the area was specially ceded by an act of the Legislature. Any reference to the case of *Fort Leavenworth R. R. Co.* v. *Lowe* as authority for any decision rendered in respect to this plaintiff we submit is manifestly erroneous.

Assignment 7.

If the facts of this case, even as stated in the opinion of the Court of Appeal, do not disclose the exercise of exclusive jurisdiction within the limits of Barksdale Field, we submit that any such exclusive jurisdiction is a practical impossibility.

* * * * * * *

[fol. 151] Blanchard, Goldstein, Walker & O'Quin, By Leon O'Quin, Fifth Floor, First National Bank Building, Shreveport, Louisiana, Attorneys for Plaintiff-Appellant.

[fol. 227]

IN THE SUPREME COURT OF LOUISIANA

New Orleans

No. 46,706

HUMBLE PIPE LINE COMPANY,

v.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish.

ORDER DENYING APPLICATION—May 14, 1963

In re: Humble Pipe Line Company applying for certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Bossier.

Writ refused. The judgment complained of is correct.

FWS, JBF, JBH, EHMcC, WBH, JWS.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 228]

SUPREME COURT OF THE UNITED STATES

No. 329—October Term, 1963

HUMBLE PIPE LINE COMPANY, Petitioner,

vs.

W. E. WAGGONNER, Sheriff, etc.

ORDER ALLOWING CERTIORARI—October 21, 1963

The petition herein for a writ of certiorari to the Court of Appeal of the State of Louisiana, Second Circuit, is granted. The case is consolidated with No. 354 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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No. 329

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUMBLE PIPE LINE COMPANY,
Petitioner,

versus

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

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Shreveport, Louisiana, July 31, 1963.

LECONTE, SHREVEPORT, LOUISIANA

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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUMBLE PIPE LINE COMPANY,
Petitioner,

versus

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

Petitioner, Humble Pipe Line Company (a Delaware corporation) respectfully prays that a writ of certiorari issue to review a judgment of the Court of Appeal, Second Circuit of the State of Louisiana (affirming a judgment of the Twenty Sixth Judicial District Court of Louisiana in and for the Parish of Bossier, State of Louisiana), entered February 7, 1963, and made final by the refusal on May 14, 1963, of the Supreme Court of the State of Louisiana to grant writs of certiorari or review to such Court to review its decision.

OPINIONS BELOW

The opinion of the Louisiana District Court is not reported but is reproduced as Appendix I hereto. It also appears at Page 43 of the Transcript. The opinion of the Court of Appeal, Second Circuit, State of Louisiana, is reported at 151 So. 2d 575 and is also reproduced as Appendix II hereto. It is further found at Page 113 of the Transcript. The denial of the Louisiana Supreme Court of writs of certiorari and review to the Court of Appeal is not officially reported, but is unofficially reported at 152 So. 2d. 591 and for completeness has been reproduced as Appendix III hereto. It is also found at Page 227 of the Transcript.

JURISDICTION

The judgment of the Court of Appeal, Second Circuit, State of Louisiana, was entered on February 2, 1963 (Transcript, Page 113). Application for rehearing was applied for by petitioner (Transcript, Page 124 A) and denied April 1, 1963 (Transcript, Page 125). Petitioner then applied to the Supreme Court of Louisiana for writs of certiorari or review (Transcript, Page 132) to review the decision of the Court of Appeal, Second Circuit. On May 14, 1963, the Louisiana Supreme Court formally denied the Application (Transcript, Page 227), thus making final the judgment of the Court of Appeal, Second Circuit, State of Louisiana.(1) Jurisdiction is thus conferred upon the Court by 28 U.S.C.A. 2101(C).

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(1) Article 2167, Louisiana Code of Civil Procedure.

QUESTION PRESENTED

The question presented for decision in this case is whether the State of Louisiana may lawfully levy and collect ad valorem taxes upon a pipe line belonging to petitioner and located within the confines of Barksdale Air Force Base (a military establishment of the United States), the land of which was donated to the United States of America without reservation and with consent of the Legislature of the State of Louisiana, and further whether the court below was correct in holding that the United States had waived its exclusive jurisdiction under Article I, Section 8, Clause 17 of the Constitution of the United States by the mere purchase of public utility services from the State of Louisiana or its subdivisions and delivered at the gates of the military establishment and by the payment to the State of Louisiana of sums in reimbursement of expenses incurred by the State in educating children of military personnel in the public school system of the State (not conducted upon the Base).

STATUTES INVOLVED

The question presented requires interpretation of Article I, Section 8, Clause 17 of the Constitution of the United States of America, which provides as follows:

> "The Congress shall have power . . . .
>
> "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square), as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exer-

cise like Authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

In addition, certain statutes of the State of Louisiana giving consent of the Legislature to the acquisition of property as permitted by the United States and ceding jurisdiction thereto by the Constitution are collaterally involved. Relevant portions of these are set forth as Appendix IV hereto.

STATEMENT OF THE CASE

This action is a suit for refund to recover general ad valorem taxes paid under protest to the Sheriff and Ex-Officio Tax Collector for the Parish of Bossier, State of Louisiana. The taxes involved were levied and assessed for the year 1953 by the State of Louisiana and its political subdivisions on two trunk pipe lines of the petitioner extending a distance of 2.91 miles within the limits of Barksdale Air Force Base, a military post or establishment of the United States. Pursuant to State law, petitioner paid the taxes under protest giving timely notice of its intention to file suit and filed suit in the Twenty Sixth Judicial District Court for the Parish of Bossier, State of Louisiana, claiming refund of such taxes upon the following grounds:

"That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described

> [Barksdale Field] completely ousted all jurisdiction and authority of the State and its political subdivisions within such area (including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon — no such authority having been conferred by Act of Congress." (Tr., p. 7).

It was expressly stipulated after issue was joined by the defendant that:

> "No Act of Congress of the United States specifically grants to the State of Louisiana jurisdiction and power to levy and collect taxes of the character involved in this suit." (Admission 5, Tr., p. 15).

At this point, it might be well to note that there was before the court below two other cases involving the taxation of pipe lines owned by Natural Gas & Oil Corporation and Mississippi River Fuel Corporation. These latter cases although never formally consolidated with petitioner's case were tried at the same time and were decided both by the District Court and the Court of Appeal on the same day in one opinion. The latter cases (i.e., those of Natural Gas & Oil Corporation and Mississippi River Fuel Corporation) involved oil field pipe lines owned by parties holding oil and gas leases from the United States of America on land which, although forming a part of Barksdale Air Force Base had been transferred to the Department of Interior for purposes of mineral development. Petitioner in the present case is not a party to any such lease, has no lease or other contract

with the United States of America calling for the payment of taxes of any type and its pipe line does not extend across any portion of the property transferred to the Department of Interior. Petitioner merely has a servitude or right of way across the main portion of the Air Field and is involved in no way with the area or contracts discussed in the Court's opinion concerning the parties to the other actions which were decided by the court below.

Virtually all of the facts in the case were stipulated, the only witness being Colonel Alfred J. Hanlon, Jr., Base Commander of Barksdale Field, whose testimony was not disputed. In essence, the evidence and facts stipulated revealed the following:

In 1930, the City of Shreveport, the Board of Commissioners of the Bossier Levy District, an agency of the State of Louisiana, and the State of Louisiana donated to the United States of America with consent of the Legislature of the State approximately 22,000 acres of land in Bossier Parish, Louisiana. During the years 1930 through 1932, the United States constructed extensive improvements required for the maintenance of a military air force base upon the lands acquired at a cost of many millions of dollars. The air force base is now known as "Barksdale Field" or "Barksdale Air Force Base." Barksdale Field (which is one of the largest of the air force bases employing about eight thousand people, including both military and civilian) was at the trial a major base of the Strategic Air Command ("S.A.C.") and constituted a vital part of the Strategic Air Command's Global Com-

munications system. It was characterized by Colonel Hanlon, Base Commander, as one of the nation's first lines of defense in the event of a national emergency and is maintained in a state of constant alert so that it could be placed on a war-time footing almost immediately. It was stipulated that the Base has been used continuously as a military post in accordance with the purposes for which the lands upon which it was situated were acquired by the United States and the United States has at all times possessed and exercised such jurisdiction and sovereign legislative and judicial power over the lands as were vested by virtue of the Constitution and laws of the United States and of the State of Louisiana. The petitioner owns two interstate oil pipe lines extending 2.91 miles in Barksdale Field. The public at no time had been permitted freedom of access to any portion of the lands within the limit of Barksdale Field traversed by petitioner's pipe lines and petitioner's employees have never been permitted upon the premises for the purposes of inspection or maintenance of the lines except when accompanied by military guard or escort in the presence of whom all such work must be performed.

Although the Air Force purchased public utility services at the gates of the post from State or Parish authorities, the distribution of such utility services within the confines of the post was exclusively done by the United States. Children of air force personnel attended public schools off the Base and the State was reimbursed to some extent for the cost of educating such children by the Federal Government. The Base has its own fire

and police department and within its confines, the United States performs all services that would normally be performed by a parish, state or municipality.

The District Court rejected petitioner's claims holding:

> *"There either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base when said property is owned by other than the government or its personnel or this authority to tax has been removed altogether. . . .*
>
> "There is also evidence in this case showing that the Air Force Base receives certain services from the political subdivisions of the State such as water and school facilities for base personnel. In line with the case of IBM versus Ott, 89 S 2d 193, and Silas Mason Company versus Tax Commission, 302 U. S. 186, *the acceptance of these services by the Federal Government would indicate that the United States has not manifested an intent to accept exclusive jurisdiction.*" (Emphasis supplied)

The case was appealed by petitioner to the Court of Appeal, Second Circuit, State of Louisiana (a review of whose decision is herein sought) which affirmed the lower court's opinion holding:

> "The sole question which is presented in these cases is whether or not the State of Louisiana, and its taxing authorities of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the respective plaintiffs, used and maintained by

them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base. . . ."

The court held that the United States did not have exclusive jurisdiction over the Air Force Base inasmuch as the record disclosed the United States "is dependent upon the State and Parish authorities for public utilities and school facilities" and "the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects." It further held, in passing, that because the Department of Interior had executed an oil and gas lease on land transferred to the Department which provided that the lessee under such lease would pay certain taxes levied by the State, the United States had waived its exclusive jurisdiction over all of the property embraced within the limits of the Base including that portion upon which the petitioner's pipe line was located although such land was not covered by the lease in question, and petitioner was not a party to the lease. Review of this decision was sought to the Louisiana Supreme Court by application for writ of certiorari and review which was refused by the Supreme Court in an opinion stating: "The judgment complained of is correct."

ARGUMENT

I. The United States was Initially Vested with Exclusive Jurisdiction over Barksdale Field.

The question presented in this case is whether the State of Louisiana has jurisdiction to levy an ad valorem tax upon petitioner's pipe line located upon Barksdale Field, a Federal enclave acquired pursuant to Article I, Paragraph 8, Clause 17 of the United States Constitution, which provides:

> "The Congress shall have power . . . .
>
> "To exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States, and to exercise like authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

There is no question in this case of the consent of the State Legislature to the acquisition. Act 12 of 1892 of the Legislature of the State of Louisiana provides as follows:(2)

> "The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. *The United States shall have exclusive jurisdiction over the*

(2) See also Act 31 of 1942 re-enacting and amending this Act. Both are shown in full at Appendix IV hereto.

property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

"The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States." (Emphasis supplied)

Neither is there any dispute that exclusive jurisdiction was initially accepted by the United States. Such acceptance is presumed in absence of evidence of a contrary intent.

> *Silas Mason Co., Inc. v. Tax Commission of Washington*, 302 U.S. 186, 58 S. Ct. 233, 82 L. ed. 187 (1937);
>
> *S.R.A., Inc. v. State of Minnesota*, 327 U.S. 558, 66 S. Ct. 749, 90 L. ed. 851 (1945).

In this case resort to such presumption is unnecessary. It has been stipulated by the parties that the conveyances to the United States were made with the understanding or condition that it would establish and operate a military air force base upon the land conveyed and that shortly after such conveyance, and that all times since then, such an air force base has in fact been maintained. It has also been stipulated that since the establishment of the base *"the United States has at all times possessed and exercised such jurisdiction and sovereign legislative and judicial power over the lands acquired . . . to the extent that the same was vested by virtue of the Constitution and laws of the United States and of the State of Louisiana,"*

II. If Such Exclusive Jurisdiction is Still Present the Tax Cannot be Levied by the State.

Nor can there be any doubt that if the United States still possesses exclusive jurisdiction the State has no power or authority to levy the tax.

This Court has many times held that unless there is an express reservation or qualification contained in the consent of the State Legislature when the property is acquired or unless some relinquishment of jurisdiction by the United States is affirmatively shown, the State has no jurisdiction to levy or collect taxes within the confines of a government enclave such as Barksdale Field. Perhaps the leading case is *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. ed. 1091 (1929); which involved an attempt by the State of Arkansas to assess a personal property tax upon properties owned by a private individual located within the confines of Camp Pike, an Army base. This Court held such a tax could not be levied.

> "The supreme court of the state, although recognizing that the status of Camp Pike was as just stated and that the property on which the tax was laid was in much the greater part located therein, rejected the contention that the tax laws of the state could not be applied to property so located consistently with the constitutional provision cited.
>
> "It is not unusual for the United States to own within a state lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the state. On the contrary, the lands remain part of her territory and within the oper-

ation of her laws save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal.

"A typical illustration is found in the usual Indian reservation set apart within a state as a place where the United States may care for its Indian wards and lead them into habits and ways of civilized life. Such reservations are part of the state within which they lie and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards. Private property within such a reservation, if not belonging to such Indians, is subject to taxation under the laws of the state. Another illustration is found in two classes of military reservations within a state — one where the reservation, although established before the state is admitted into the Union, is not excepted from her jurisdiction at the time of her admission; and the other where the reservation, although established after the admission of the state, is established either upon lands set apart by the United States from its public domain or upon lands purchased by it for the purpose without the consent of the legislature of the state. In either case, unless there be a later and affirmative cession of jurisdiction by the state, the reservation is a part of her territory and within the field of operation of her laws, save that they can have no operation which would impair the effective use of the reservation for the purposes for which it is maintained. If there be private property within such a reservation which is not held or used as an incident of military service it may be subjected to taxation like other private property within the state.

"As respects such a military reservation, — that is, one which is neither excepted from the jurisdiction of the state at the time of her admission nor established upon lands purchased therefor with the consent of her legislature, — the State undoubtedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is accepted by the United States. And where such a cession is made and accepted it will be determinative of the jurisdiction of both the United States and the State within the reservation.

"But Camp Pike is not in the same class with any of the reservations of which we have spoken and should not be confused with any of them. Nor should it be confused with military or other reservations within a territory of the United States. *It is not questioned, nor could it well be, that Camp Pike comes within the words, 'forts, magazines, arsenals, dock-yards, and other needful buildings,' in the constitutional provision. The land therefor was purchased by the United States with the consent of the legislature of the state in 1917. The constitutional provision says that Congress shall have power to exercise 'exclusive legislation in all cases whatsoever' over a place so purchased for such a purpose. 'Exclusive legislation' is consistent only with exclusive jurisdiction.* It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dockyards, etc. *That no divided jurisdiction respecting the seat of government is intended is not only shown by the terms employed but is a matter of public history. Why*

as to forts, magazines, arsenals, dockyards, etc., is the power given made to depend on purchase with the consent of the legislature of the state, if the jurisdiction of the United States is not to be exclusive and that of the state excluded?

"*The question is not an open one.* It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the state passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

* * *

"For the reasons which have been stated we are of opinion that the supreme court of the state erred in holding that her tax laws could be applied to personal property within Camp Pike consistently with § 8, Cl. 17, of article 1 of the Constitution, and therefore that the judgment of that court must be reversed." (Emphasis supplied)

At the same term of court, this Court held that the mere granting of a servitude or easement, such as is here held by petitioner, to a railroad company does not affect the question. The Court held:

"The mere fact that the portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction. Rights of way for various purposes, such as for railroads, ditches, *pipe lines*, telegraph and telephone lines, across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States. In Benson v. United States,

146 U.S. 325, 330, 36 L. ed. 991, 994, 13 Sup. Ct. Rep. 60, the jurisdiction of the Federal court was sustained with respect to an indictment for murder committed on a portion of the Fort Leavenworth Military Reservation in Kansas which was used for farming purposes. In Arlington Hotel Co. v. Fant, supra, the jurisdiction of the United States was upheld as to the portion of the reservation there in question which had been leased for use as a hotel. While the grant of the right of way to the railroad company contemplated a permanent use, this does not alter the fact that the *maintenance of the jurisdiction of the United States over the right of way, as being within the reservation, might be necessary in order to secure the benefits intended to be derived from the reservation.*" (Emphasis supplied)

(United States v. Unzeuta, 281 U.S. 138, 50 S. Ct. 284, 74 L. ed. 774, 775)

In *Standard Oil Co. v. California*, 291 U. S. 242, 54 S. Ct. 381, 78 L. ed. 775 (1931), these principles were reaffirmed:

"Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the Presidio, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is wellfounded; and the judgment below must be reversed.

"In three recent cases—Arlington Hotel Co. v. Fant, 278 U.S. 439, 73 L. ed. 447, 49 S. Ct. 227; United States v. Unzeuta, 281 U.S. 138, 74 L. ed. 761, 50 S. Ct. 284, and Surplus Trading Co. v. Cook, 281

U.S. 647, 74 L. ed 1091, 50 S. Ct. 455 — we have pointed out the consequences of cession by a State to the United States of jurisdiction over lands held by the latter for military purposes. Considering these opinions, it seems plain that by the Act of 1897 California surrendered every possible claim of right to exercise legislative authority within the Presidio — put that area beyond the field of operation of her laws. Accordingly, her Legislature could not lay a tax upon transactions begun and concluded therein.

"Arlington Hotel Co. v. Fant, 278 U.S. 439, 73 L. ed. 447, 49 S. Ct. 227, denied the power of Arkansas by legislation to modify the liability of innkeepers within a reservation ceded by her to the United States.

"United States v. Unzeuta, 281 U.S. 138, 74 L. ed. 761, 50 S. Ct. 284, affirmed the exclusive jurisdiction of the United States over crimes committed within the reservation lying within Nebraska. Jurisdiction had been ceded by the State.

"Surplus Trading Co. v. Cook, 281 U.S. 647, 74 L. ed. 1091, 50 S. Ct. 455, ruled that land within Arkansas purchased by the United States for military purposes with the State's consent was under their exclusive jurisdiction. Private personal property therein was declared not subject to taxation by the State.

"The principle approved in those cases applies here. A State can not legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

III. The Court Below Held the United States Had Waived Its Exclusive Jurisdiction.

A reading of the opinion of the court below and of the opinion which it affirmed will disclose that these principles were not in fact questioned by the court. Neither the District Court nor the Court of Appeal approached the problem as though it concerned the right to levy the tax if the United States has exclusive jurisdiction over Barksdale Field,— that such a tax could not be levied is implicitly admitted by the court. The court, however, concerned itself with the question of whether in fact the United States has exclusive jurisdiction within the meaning of the constitutional provision quoted above.

The record revealed that the Government purchased utility services at the gate of Barksdale Field from the State or some of its subdivisions and also that certain payments were made to the State in reimbursement of the costs of educating children of servicemen in public schools off the Base. These facts were seized upon by the lower court as evidencing a waiver of the Government's exclusive jurisdiction over the Base. This is plain from the opinion.

> "Thus, the testimony shows conclusively that just as in the *International Business Machines Corporation* case, the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the Parish school system a per capita charge for each child of a

> serviceman attending its schools would not have the effect of making the Federal Government less dependent upon the State and Parish authorities for these services. Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects."

The case referred to *(International Business Machines Corporation v. Ott)* involved the taxation of personal property in a building in New Orleans and the Louisiana Supreme Court held:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant . . . . in fact, the acceptance of such services manifested a contrary intent on the part of the Federal Government. . . ." 230 La. 666, 89 So. 2d 193 (1955).

Thus, in the instant case, notwithstanding the fact that it was stipulated that the property has at all times been used for the purposes for which donated and constitutes one of the largest air force bases in the country essential to our national defense; that petitioner has not even been permitted to go upon the Base to maintain its pipe line unless a military escort was present at all times; that no action of the Congress of the United States grants to the State jurisdiction and power to levy and collect taxes of the character involved in this suit; that the United States has possessed and exercised "such jurisdic-

tion and sovereign legislative and judicial power over the lands acquired to the extent it was vested by law in the United States"; the court nevertheless concluded that the United States has effectively waived and surrendered its exclusive jurisdiction over Barksdale Air Force Base. (Although the opinion speaks of such facts evidencing an intent "not to accept" jurisdiction — the plain import of the opinion is that jurisdiction has been relinquished or abandoned by these acts.)

IV. The Holding of the Court is Unsupported by the Evidence and is Inconsistent and Incompatible With the Actions and Interests of the United States.

There is absolutely no authority in law or reason to assume that the actions of the United States evidence any surrender of its sovereign jurisdiction. The comments of this court in *Kern-Limerick Inc. v. Scurlock*, 347 U.S. 110, 74 S. Ct. 403, 98 L. ed. 546, (1954) involving the liability of a contractor for a sales tax levied upon such a base seems particularly appropriate:

> "We are mindful, too, of the careful attention Congress has given in recent years to a proper adjustment of tax liabilities between the federal and the state sovereignties. Congress has been solicitous to see that states and their subdivisions are not unduly burdened by federal acquisition of property taxable by the states when otherwise held. It understands the burdens on local public agencies from the new federal installations and their accompanying personnel. *Provisions deemed suitable have been made.*" (Emphasis supplied)

Although the *Kern-Limerick* case deals primarily with the relationship between Government contractors and the State, Congress has been equally solicitous of the State's revenues in dealing with and balancing the equities concerning conflicts between legitimate Federal interests and the burdens placed upon States by virtue of the presence of Federal enclaves within their boundaries. Thus, a few years after the *Standard Oil Co.* case, cited above, was decided, Congress passed the well-known "Buck" Act (now found at 4 U.S.C.A. 101 through 106). This provides, with certain exceptions deemed relevant by Congress that a State may levy sales and use taxes, gasoline taxes and income taxes with respect to private transactions conducted upon areas where the Federal Government has exclusive jurisdiction. *Ad valorem taxes are not included within the category of taxes which a State may levy.* Similarly, most of the Federal leasing acts provide, in one form or the other, that the lessee shall pay certain taxes levied by the States upon their operations.(3) See 30 U.S.C.A. 189. Although not authorizing the levying of ad valorem taxes, Congress has authorized reimbursement to the states of direct sums, in some instances, for the loss from ad valorem revenues occasioned by the existence of Federal enclaves. See 20 U.S.C.A., Section 236. (In fact, it appears that these are precisely the payments which the Court below seized upon as evidencing an intention of the United States to waive exclusive jurisdiction

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(3) See also this Court's comments concerning this Act in Mid-Northern Oil Co. vs. Walker, 268 U.S. 45, 45 S. Ct. 440, 69 L. Ed. 841, (1925).

notwithstanding the fact that the payments are made *because* of such jurisdiction and its consequent loss of revenue to the states.)

Why Congress chose to exclude ad valorem taxes on property owned by private individuals within the boundaries of a Federal enclave can only be surmised. The fact that it has not authorized such taxes should suffice. However, certain very good reasons why such taxes have not been authorized come to mind — the taxes which were authorized by the "Buck" Act were all excise taxes levied upon individuals as a result of transactions occurring (and presumably authorized by the United States) within the area in question. Excise taxes are collectible from the individual as any other debt and would not interfere with the government's control of activities upon the Base. Ad valorem taxes, however, are traditionally collected only by execution upon the property involved. Thus, in the present case, assuming the tax is constitutional and petitioner does not pay it, petitioner's pipe line would be placed for auction to the public for the taxes. If the Federal Government has only concurrent jurisdiction with the State over the area or has consented to the levy and collection of the tax, it is difficult to see how it could object to the sale of the property to any person who wanted to buy it. Furthermore, it would be difficult to see how the United States could prevent the purchaser from coming onto Barksdale Field to maintain and operate the line. And yet, it is obvious the government has a very real interest in regulating and screening those who come onto the Base or who conduct operations thereon.

The Base performs all of the functions which a municipality or state would be expected to otherwise perform, maintains complete control over who enters the Base and will not permit petitioner to even inspect and maintain its pipe line without the presence at all times of armed military personnel. If petitioner's pipe line and servitude are taxed and sold, what control could the United States exercise over this?

However, even more importantly than this in the present case is the fact that the court's decision is not based upon the question of whether such a tax is consistent with exclusive Federal control (it virtually admits it is not) but upon the fact that Federal jurisdiction on the Base is not exclusive. Barksdale Field, as we have mentioned, is one of the largest air force bases in the country and is one of the principal bases of the Strategic Air Command. To say, as did the court below, that by purchasing utility services at the gate of the Base and by reimbursing the State for the revenues and costs of educating dependents of service personnel in the public schools of the State, the United States thereby waives its exclusive jurisdiction over such an installation is almost unthinkable. Certainly the surrender of exclusive jurisdiction over vital military installations by the United States should not be made to depend upon such tenuous grounds as are present in this case.

This case, however, clearly holds and if not corrected will undoubtedly serve as precedente for the fact that the United States by its actions in this case has surrendered its exclusive jurisdiction over the area. In the words of the District Court, "there either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base . . . or this authority to tax has been removed altogether." The court has held such authority does exist. If this is true, then it would be equally true that the states' criminal jurisdiction and all other state powers would be equally exercisable therein, except, of course, to the extent they might constitute a direct burden upon the Federal Government itself; and if this is true as to Barksdale Air Force Base, then under the decision of the court below (which has been called "correct" by the Louisiana Supreme Court) it is inevitably true as to virtually every other camp, post, air field or other military installation located within the confines of the State of Louisiana.

CONCLUSION

It is respectfully submitted that the decision of the court below is incorrect and that unless corrected will permit an unwarranted intrusion of the State's taxing powers and other jurisdiction into an area reserved by the Constitution to the jurisdiction of the United States

and that a writ of certiorari should issue in this case to review the matter and thereafter that the decision of the Court of Appeal for the Second Circuit should be reversed.

Respectfully submitted,

LEON O'QUIN,
Fifth Floor, First National Bank Bldg.,
Shreveport, Louisiana.

Attorney for Petitioner.

THOMAS A. HARRELL,
Fifth Floor, First National Bank Bldg.,
Shreveport, Louisiana,

Of Counsel.

Shreveport, Louisiana, July 31, 1963.

CERTIFICATE

I, LEON O'QUIN, attorney for the petitioner herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the ..... day of August, 1968, I served copies of the foregoing petition for certiorari to the Supreme Court of the United States on the defendant, W. E. Waggonner, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana, as follows:

1. By mailing a copy in a duly addressed envelope with postage prepaid to Jack P. F. Gremillion, Attorney General of Louisiana, Capitol Building, Baton Rouge, Louisiana;

2. By mailing a copy in a duly addressed envelope with postage prepaid to Carroll Buck, First Assistant Attorney General of Louisiana, Capitol Building, Baton Rouge, Louisiana; and

3. By mailing a copy in a duly addressed envelope with postage prepaid to Ferdinand A. Cashio, Assistant Attorney General of Louisiana, 1313 Centenary Boulevard, Shreveport, Louisiana;

Attorneys for the respondent.

.....

LEON O'QUIN,
Fifth Floor, First National Bank Bldg.,
Shreveport, Louisiana.

Attorney for Petitioner.

APPENDIX I

NATURAL GAS AND OIL CORPORATION
versus
W. E. WAGGONER,
Sheriff and Ex-Officio Tax Collector

No. 19,044

26TH DISTRICT COURT
BOSSIER PARISH, LOUISIANA

INTERSTATE OIL PIPE LINE COMPANY
versus
W. E. WAGGONNER,
Sheriff and Ex-Officio Tax Collector

No. 19,628

26TH DISTRICT COURT
BOSSIER PARISH, LOUISIANA

MISSISSIPPI RIVER FUEL CORPORATION
versus
W. E. WAGGONNER,
Sheriff and Ex-Officio Tax Collector

No. 20,236

26TH DISTRICT COURT
BOSSIER PARISH, LOUISIANA

OPINION OF THE COURT

These three cases were consolidated for the purpose of trial as they presented almost identical factual situations and involved the same question of law. The cases

were originally tried and submitted to Judge Frank M. Dougherty, who was temporarily assigned to this District and by written stipulation of all parties the cases have been transferred for decision to either of the present Judges of this Court.

The plaintiff's are owners of certain oil or gas pipe lines and equipment connected therewith, situated on the United States Military Reservation known as "Barksdale Air Force Base", in Ward Two of Bossier Parish, Louisiana. They have paid under protest ad valorem taxes assessed against these lines and equipment to the Tax Collector for the Parish of Bossier, State of Louisiana, and other political subdivisions having taxing authority in Ward Two of this Parish, contending that the United States Government has exclusive legislative authority over the Air Base area and that the State, and its subdivisions have no authority to levy taxes on property situated on the military reservation.

This allegation is based on the premise that the State of Louisiana had by Act 12 of 1892 ceded its jurisdiction over all lands thereafter acquired by the Federal Government for military or other governmental purposes and reserved only the right to administer criminal laws and serve civil process thereon.

It is further shown that Section 12 of Article IV of the State Constitution allowed a municipal corporation to acquire land and donate same to the Federal Government for flying fields, etc., and that the land area of

Barksdale Air Force Base was donated to the U. S. Government by the City of Shreveport pursuant to this Section.

That Article I, Paragraph 8, Clause 17 of the United States Constitution provides that the Congress shall have exclusive power over all places purchased by the United States with the consent of the State Legislature to be used for the erection of forts, magazines, arsenals, etc. Plaintiff's contend that a donation would be also covered by this provision of the United States Constitution as the use of the word "purchase" was not to be given a limited definition.

The case principally relied upon by plaintiff's is *Surplus Trading Company versus Cook*, 281 US 647, in which the US Supreme Court held that the State of Arkansas had no jurisdiction to levy a tax on blankets purchased by a surplus trading company and situated within Camp Pike, the Court having found that Camp Pike came within the specific wording of Article 1, Section 8, Clause 17, relating to "forts, magazines, arsenals, dockyards, and other needful buildings.

Since this case however, there seems to be a tendency by the court to limit the definition of "forts, magazines, arsenals, etc., as contained in the above section of the Constitution and to allow the States to exercise taxing authority on private properties situated on government reservations not specifically stated in this constitutional provision. Particularly where the property taxed has no military function and where the tax is not being imposed either directly or indirectly on the Federal Government.

The underlying principle involved in the vesting of exclusive authority and jurisdiction in the Federal Government in these situations, is to prevent the States from doing any act or levying any tax which would interfere with or impede the military powers or governmental functions of the United States.

The Supreme Court of this State has held in the case of International Business Machine Corporation versus Ott, 89 S 2n, 193, that machines leased to the Federal Government in government buildings in New Orleans were subject to the State tax. The property there involved had a much closer connection with the governmental purpose than does the property involved in the cases under consideration.

The pipelines and oil field equipment belonging to plaintiff's and sought to be taxed, has no logical connection with or benefit to the military purpose of the Air Base.

In the case of Murphy Corporation Versus Fontenot, 73 S2d 180, the Louisiana Supreme Court held that the State could impose a severance tax on gas and oil produced from wells drilled on the same military reservation as we have involved in this case. The plaintiff's attempt to distinguish that case from the one at hand in the type of tax being imposed. In all of the cases cited by the parties which have been decided by either the United States Supreme Court or the State Supreme Court, bearing on the right of the State to tax property on Federal installations, the type of tax sought to be levied has not

been the deciding factor in the decisions. The Courts have on the other hand determined the authority of the State by analyzing the relation of the property to be taxed to the governmental purpose and if no connection is found they have allowed the State to exercise taxing authority with the limited exception of the governmental installations falling specifically within the wording of Article I, Paragraph 8, Clause 17 of the Constitution, as in the Surplus Trading Company versus Cook case.

There either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base when said property is owned by other than the government or its personnel or this authority to tax has been removed altogether. The Murphy Corporation versus Fontenot case therefore has definitely decided this question insofar as the powers of the State of Louisiana over Barksdale Air Force Base are concerned.

There is little doubt left as to the intent of the United States government acting through it's Department of Interior, when it provided in its oil and gas lease to plaintiff, Natural Gas and Oil, that the lessee should pay all taxes lawfully assessed by the *State* or the United States upon *improvements*, oil and gas produced from the lands, or other rights, *property* or *assets* of the *lessee*.

This contract is binding on both the parties to same and falls clearly within the language of the Murphy Corporation case.

There is also evidence in this case showing that the Air Force Base receives certain services from the political subdivisions of the State such as water and school facilities for base personnel. In line with the case of IBM versus Ott, 89 S 2d 193, and Silas Mason Company versus Tax Commission, 302 U. S. 186, the acceptance of these services by the Federal Government would indicate that the United States has not manifested an intent to accept exclusive jurisdiction.

For the foregoing reasons the Court finds that the properties owned by all of the plaintiff's in these cases as described in the pleadings herein and located on Barksdale Air Force Base, are subject to taxation by the State of Louisiana, the Parish of Bossier and other taxing authorities of the State in this Parish. Accordingly the demands of the plaintiff's should be rejected at their costs.

Rendered on this 19th day of September, 1962.

(s) O. E. Price

JUDGE

INTERSTATE OIL PIPE LINE COMPANY
versus
W. E. WAGGONNER,
Sheriff and Ex-Officio Tax Collector

No. 19, 628

TWENTY-SIXTH JUDICIAL DISTRICT COURT,
PARISH OF BOSSIER, STATE OF LOUISIANA

JUDGMENT

THIS CAUSE having come on regularly for trial, evidence having been adduced, after hearing the arguments and briefs of counsel, the Court considering the law and the evidence to be in favor of the defendant for the reasons assigned in a written opinion filed herein on September 19, 1962:

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of the defendant, W. E. Waggonner, in his official capacity as Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana, and against the plaintiff, Interstate Oil Pipe Line Company, rejecting the latter's demands at its costs.

JUDGMENT RENDERED on September 19, 1962.

JUDGMENT READ ALOUD AND SIGNED in open Court, in Benton, Louisiana, on this the 28th day of September, A. D., 1962.

(s) O. E. PRICE

JUDGE,
TWENTY-SIXTH JUDICIAL DISTRICT COURT,
PARISH OF BOSSIER, STATE OF LOUISIANA.

APPENDIX II.

Nos. 9888, 9889, 9890

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

NATURAL GAS AND OIL CORPORATION,
Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and
Ex-Officio Tax Collector of Bossier Parish,
Defendant-Appellee

MISSISSIPPI RIVER RUEL CORPORATION,
Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and
Ex-Officio Tax Collector of Bossier Parish,
Defendant-Appellee

HUMBLE PIPE LINE COMPANY,
Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and
Ex-Officio Tax Collector of Bossier Parish,
Defendant-Appellee

Appealed from
Twenty-Sixth Judicial District Court of Louisiana
in and for the Parish of Bossier

Hon. O. E. Price, Judge

Shotwell & Brown;
Oliver, Digby & Fudickar;
Cook, Clark, Egan, Yancey & King;

Attorneys for Natural
Gas and Oil Corporation
and Mississippi River
Fuel Corporation,
Plaintiffs-Appellants

Blanchard, Goldstein, Walker & O'Quin,

Attorneys for
Humble Pipe Line Company,
Plaintiff-Appellant

Jack P. F. Gremillion,
Attorney General of Louisiana;
Carroll Buck, First Assistant
Attorney General of Louisiana;
Ferdinand A. Cashio, Assistant
Attorney General of Louisiana;

Attorneys for
Defendant-Appellee

Hon. George W. Hardy, Jr.
Hon. Edward L. Gladney
Hon. H. W. Ayres
Hon. James E. Bolin

Judges

AYRES, J.

In each of these cases, the respective plaintiff seeks to recover certain ad valorem taxes assessed and levied against it by the State of Louisiana and by its various taxing authorities, in Ward Two of Bossier Parish, Louisiana. The taxes which are sought to be recovered, in each instance, were paid by the plaintiff under protest, and thereafter these suits were instituted under the provisions of LSA-R.S. 47:2110.

The factual situation, identical as to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, is to be distinguished from that of the plaintiff, Humble Pipe Line Company. These differences will be noted in the course of this opinion. The same legal principles are, however, generally applicable to all three cases. The record made up on the trial consists of the testimony of Col. Alfred J. Hanlon, Jr., Base Commander of Barksdale Air Force Base, who appeared for the plaintiffs, taken by deposition pursuant to stipulation of the parties, and various documentary offerings and stipulation of counsel.

From a judgment rejecting its demands, each plaintiff has appealed to this court.

The United States of America acquired from the State of Louisiana, City of Shreveport, and the Board of Commissioners of the Bossier Levee District, in the year 1930, certain lands in Bossier Parish approximating 22,000 acres. The conveyances so made were admittedly donations. Shortly thereafter, Barksdale Air Force Base was

constructed on a relatively small portion of that acreage and, since that time, the Government has continuously maintained and operated said base for military purposes.

Pertinent to the positions of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, it may be pointed out that, in 1951, it was determined that certain of the acreage within the total area acquired by the United States of America, as aforesaid, was being drained of minerals through wells drilled on privately owned adjacent lands; consequently, jurisdiction over 2,060 acres thereof was transferred to the Department of Interior with the provision there is to be no interference with the primary use of Barksdale Air Force Base.

By virtue of a lease of said property, executed by the Department of the Interior, Natural Gas and Oil Corporation drilled certain wells productive of oil and gas, which wells, with their equipment, have been assessed and levied upon for ad valorem tax purposes. (Natural Gas and Oil Corporation subsequently merged with the Mississippi River Fuel Corporation.)

As concerns the plaintiff, Humble Pipe Line Company, the taxes herein involved were imposed against two interstate oil trunk pipelines, of 8-inch and 10-inch diameters, respectively, belonging to this plaintiff and extending a distance of 2.91 miles within the acreage acquired by the United States of America, as aforesaid, which, however, are located not within the area covered by the oil, gas, and mineral leases held by the other two plaintiffs, but within the developed area or military reservation proper.

The sole question which is presented in these cases is whether or not the State of Louisiana, and its taxing authorities of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the respective plaintiffs, used and maintained by them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base. The plaintiffs contend that the State of Louisiana ceded its right to so tax such property within the said military reservation to the Federal Government and, consequently, now lacks such power. At the very foundation of their claim, of course, is Article I, Section 8, Clause 17, of the Constitution of the United States, and Act 12 of 1892 of the Louisiana Legislature, embodied in LSA-R.S. 52:1. The constitutional provision reads as follows:

> "The Congress shall have Power * * *
>
> "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to *exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings:* * * *" (Emphasis supplied.)

The aforesaid legislative provision relied upon by the plaintiffs to support their claim of the State's cession of the power to tax in these instances reads thus:

> "The United States, in accordance with the seventeenth clause, eighth section of the first article of

the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the propery during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

"The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."

Of the total acreage acquired by the United States of America, in the year 1930, as aforesaid, the cantonment area of Barksdale Air Force Base covers about 1,000 to 1,500 acres, and an additional improved part of the base, which includes the airfield proper, comprises another 1,500 acres leaving about 19,000 acres of unimproved land known as the East Reservation. It is in this last-mentioned area that Natural Gas and Oil Corporation and Mississippi River Fuel Corporation have their physical properties against which the ad valorem taxes have been assessed and levied.

Moreover, in *Murphy Corp. v. Fontenot* (S.Ct., 1954), 225 La. 379, 73 So.2d 180, 183, it was established that this land was set apart from the land used for the governmental purposes of the Air Force Department; in fact, there was a dividing fence between the oil field and the Air Force Base. The court there said:

"These private owners were granted the right of use and control over all instrumentalities, owned and

> constructed by them, such as drilling machines, towers, tanks and pipe lines for their private commercial purposes to explore for oil and gas and to reduce such to private ownership."

In other words, the instruments employed by the private businesses, Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, were entirely and exclusively within their own control. It might be emphasized that the land covered by the lease operations is only remotely related to the primary use of the reservation for military purposes. This was made so obvious in the *Murphy Corporation* case, supra, that the late Justice Moise, as organ of the court, found it necessary to say:

> ". . . the land leased was not to be used for the erection of a fort, magazine, arsenal, dock-yard or other needful buildings for military purposes."

The tax was not one imposed upon, or in any way affecting, property or functions of the Federal Government. In *Fort Leavenworth R. R. Co. v. Lowe*, 114 U.S. 525, 5 S.Ct. 995, 1002, 29 L.Ed. 264, 269, the Supreme Court of the United States clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of it own powers. Thus, it was stated:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon the forts, arsenals, or other public buildings are erected for the uses of the general government,

such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over other places within her limits.*" (Emphasis supplied.)

Plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation contend that neither the *Murphy Corporation* case, supra, certiorari denied by Supreme Court of the United States, 348 U.S. 831, 75 S.Ct. 54, 99 L.Ed. 655, nor *Mississippi River Fuel Corporation v. Fontenot* (CCA 5), 234 F.2d 898, certiorari denied by the Supreme Court of United States, 352 U.S. 916, 77 S.Ct. 213, 1 L.Ed.2d 122, is appropriate because they involved gas gathering and severance taxes decided on principles not applicable to these cases. Despite the differences in the type of taxes involved, the principles as regards the jurisdiction of the State to tax are the same. It may be noted, too, that the provisions of the leases in the instant cases, imposing obligations on the lessees to pay taxes, are substantially the same as contained in the leases concerned in the cited cases.

The language employed in the *Murphy Corporation* case is pertinent to the issues here. There, the court stated:

"The acceptance . . . by the Secretary of War states that the property is to be used for military purposes. When the Secretary of War transferred certain portions of the land to the Department of the Interior, and the Commandant of the Air Base certified that such leases would not interfere with the governmental operations of the Air Base, we had a splendid affirmative of the position taken by the State.

"In the operation of the oil field, the lessees were not militarily engaged. The fugitive oil and gas when captured did not belong to the Federal Government but to private owners. No severance tax is levied against the Government nor is there any tax levied on the lands or the instrumentalities of the Federal Government."

Similarly, in these instances, there is no tax levied against the Federal Government or any of its instrumentalities or property. In this connection, what was said by the Supreme Court of the United States in *Esso Standard Oil v. Evans* (U. S. v. Evans), 345 U.S. 495, 73 S.Ct. 800, 97 L.Ed. 1174, is pertinent, to-wit:

"The Constitution does not extend sovereign exemption from state taxation to corporations or individuals contracting with the United States merely because their activities are useful to the government."

As to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, the provisions of the lease are the law of the case *(Murphy Corp. v. Fontenot,* supra). Under the terms of the lease agreement, in

Section 2, under Rentals and Royalties, (7) (K), the lessee is required

> "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchose, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States."

The contentions of Murphy Corporation in the cited case were disregarded in the following language:

> "To follow the plaintiffs' contentions, we must give no effect to the mandatory provisions of Section 2(7) (K) of the lease in question, and we must likewise say that such a provision together with the pertinent authorities on Constitutional questions by the courts are mere abstractions affording no real protection."

Moreover, in the *Mississippi River Fuel Corporation* case, supra, answering the taxpayer's contentions with regard to the lease provision, the Fifth Circuit, Court of Appeal, said:

> "Putting to one side all the refinements which have attended the long struggles over jurisdiction, as instanced in the cases, and over the effort to throw over private operations the protective mantle of governmental immunity, all that is presented for decision in this case is whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable

> under the general laws of the state for the severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use. For the same reason that the statute under which the exaction is made is a general excise statute, not directed at any particular person or property but at all persons who are severers, it cannot be said that the provision in the lease obliging the lessees, as one of the considerations for it, to pay the taxes, was not fully effective."

These plaintiffs in the instant cases cannot clothe themselves with the mantle of govenmental immunity any more so than could the Murphy Corporation in the cited case in the State Court, or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Their sole claim to immunity is the fact that their physical properties are situated within the enclosure of Barksdale Air Force Base. This can afford them no such immunity. The lease provisions are effective to insure payment by these plaintiffs of the ad valorem taxes imposed upon their physical properties.

The circumstances evidence the intention of the United States not to accept exclusive jurisdiction over the area donated for Barksdale Air Force Base. In *International Business Machines Corporation v. Ott*, (S. Ct., 1956), 230 La. 666, 89 So.2d 193, there was involved a question of whether or not the State could levy ad valorem taxes on certain business machines owned by the plaintiff, but leased to the Federal Government, and situated at a

site over which jurisdiction had been ceded to the United States. As organ of the court, on rehearing, Chief Justice Fournet said:

> "The view of presumed acceptance of ceded jurisdiction, which was followed in certain cases, was subjected to a thorough re-examination in two suits presented to the Court in the term beginning October, 1937; James v. Dravo Contracting Company, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155, and Silas Mason Co. v. Tax Commission, 302 U.S. 186, 58 S.Ct. 233, 82 L.Ed. 187."

In the *Dravo* case, immunity from a West Virginia "annual privilege tax" based on gross receipts was sought by a Pennsylvania contractor with respect to sums collected under contracts with the United States Government for the building of structures within West Virginia. One of the issues was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government, and stated:

> "'*The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system.*'"

In the *Silas Mason* case, a similar tax was involved and the question there was whether certain of the areas

in which the contractors' work was performed were within the exclusive jurisdiction of the United States, in view of the acquisition by the United States and the provisions of the State statute. The court there stated:

> *"The mere fact that the Government needs title to property within the boundaries of a State * * * does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction."*

Our State Supreme Court ultimately concluded, in the *International Business Machines* case, supra, that the acceptance of services furnished by the City of New Orleans to the sites in question manifested an intent on the part of the Government not to accept exclusive jurisdiction. The court made this appropriate observation:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant. In the instant case it was shown that various services (fire protection, sewerage, water and drainage facilities, police traffic regulation) furnished by the City of New Orleans were used by the various locations, and that the United States has failed to indicate an intention to exercise control in those respects; in fact, the acceptance of such services manifested a contrary intent on the part of the Federal Government. Silas Mason Co. v. Tax Commission of Washington, supra. We think, upon further analysis and study, that the rule of Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct.,

455, 456, 74 L.Ed. 1091, it [sic] not to be applied to the instant factual situation. In that case the U. S. Supreme Court was careful to point out that Camp Pike came directly within the words, ' "forts, magazines, arsenals, dockyards, and other needful buildings" ' of the constitutional provision, which decreed ' "exclusive legislation in all cases whatsoever" over a place so purchased for such a purpose.' "

The testimony shows conclusively that, just as in the *International Business Machines Corporation* case, supra, the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the State and Parish authorities for these services. Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects.

Although the land traversed by plaintiff Humble Pipe Line Company's lines is not a part of the East Reservation of Barksdale Air Force Base, the portion of which is covered by the oil, gas, and mineral lease, or leases, involved in the companion cases, we may point out that the lease provision, Section 2, under Rents and Royalties, (7) (K), which imposed upon the lessee the obligation

to pay all State taxes, evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base. This plaintiff cannot clothe itself with the mantle of governmental immunity any more so than could the Murphy Corporation in the cited case in the State Court or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Its sole claim to immunity is the fact its physical property is situated within the enclosure of Barksdale Air Force Base. This can afford it no such immunity.

Plaintiff Humble Pipe Line Company is vested with a servitude across the lands of Barksdale Air Force Base under which its lines pass. The existence of this real right evidences an imperfect ownership of the Government in the area traversed by the pipelines. Thus, as to the area subjected to the servitude, the Government passesses only the naked ownership.

LSA-C. C. Art. 490.

In the case of *S. R. A. v. Minnesota* (1946), 327 U.S. 558, 90 L.Ed. 851, Mr. Justice Reed, as the author of the opinion, said:

> "This Court apparently has never directly passed upon the effect on federal sovereignty of the property's transfer by the United States to private hands.
>
> "There was no requirement in the act of cession for return of sovereignty to the state when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state

cessions pursuant to Article I, § 8, Clause 17, of the constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. *As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power.*" (Emphasis supplied.)

In that case, there was held to be a relinquishment of jurisdiction despite the fact that there was only an executory contract of sale with title remaining in the government. Here, either the Government took the lands donated to it subject to the plaintiff's existing right of servitude, or a grant of right of way was made to the plaintiff by the Government. The record does not show which was the case. Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the *S. R. A.* case, it relinquished same.

For the aforesaid reasons, the conclusion appears inescapable that the taxes imposed in these instances are against private property owned and possessed by plaintiffs, under their control and used by them in the conduct of

their commercial businesses; that the taxes are not levied against the United States of America, nor against any of its property or against any of its agencies or instrumentalities; and that the State and its taxing authorities have jurisdiction to levy and impose such taxes.

The judgments appealed are accordingly affirmed at the cost of each of the plaintiffs in its respective suit.

Affirmed.

• • •

COURT OF APPEAL

Second Circuit

State of Louisiana

No. 9888 Natural Gas & Oil Corp. vs. W. E. Waggonner, Sheriff

9889 Mississippi River Fuel Corp. vs. W. E. Waggonner, Sheriff

9890 Humble Pipeline Co. vs. W. E. Waggonner, Sheriff

(CONSOLIDATED)

ON APPLICATIONS FOR REHEARING
BY PLAINTIFFS-APPELLANTS

REHEARING REFUSED

Apr 1 - 1963

HAROLD L. BOOTH
Clerk, Court of Appeal

APPENDIX III

SUPREME COURT OF LOUISIANA
New Orleans

No. 46,706 May 14, 1963

Humble Pipe Line Company

v.

W. E. Waggonner, Sheriff and
Ex-Officio Tax Collector of Bossier Parish

In re: Humble Pipe Line Company applying for certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Bossier.

Writ refused. The judgment complained of is correct.

/s/ FWS
/s/ JBF
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ JWS.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
May 14, 1963

Harold A. Moise, Jr.
Deputy Clerk

APPENDIX IV

PARAGRAPH 2, OF SECTION 12 OF ARTICLE IV, LOUISIANA CONSTITUTION OF 1928

§ 12. Loan or pledge of public credit; relief of destitute; donations; transfers of property; bonds, leasing of health institutions; donation to U. S. for Veterans Hospital

Section 12. .

• • •

Donations to United States. Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; use, in connection with the improvement and maintenance of the navigation of natural waterways, the construction and improvement and maintenance of artificial navigable waterways and river and harbor works of every description and kind authorized by any Act or Acts of the Congress of the United States or Federal Statutes, or otherwise, and in connection with flood control works of every description and kind so authorized, or in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; and for the purpose of acquisition and improvement of property for such purposes, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution.

ACT 12 OF 1892 OF THE LEGISLATURE OF LOUISIANA

AN ACT

To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

SEC. 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation.

ACT No. 31 OF 1942 OF THE LOUISIANA LEGISLATURE

AN ACT

To amend and re-enact Sections 1 and 2 of Act No. 12 of the Regular Session of 1892, entitled: "An Act To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof", and to repeal all acts in conflict therewith.

Section 1. Be it enacted by the Legislature of Louisiana That Sections 1 and 2 of Act No. 12 of 1892 be amended and re-enacted so as to read as follows:

Section 1. Be it enacted by the Legislature of Louisiana, That the consent of the State of Louisiana is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this State required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States.

Section 2. That the United States may enter upon and occupy any land in the State of Louisiana which it has heretofore acquired, or may hereafter acquire, by purchase, condemnation, lease or otherwise, required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States, and shall have the right of exclusive jurisdiction over the property so acquired, during the time that the United States shall be or remain the owner or lessee thereof, for all purposes, except that the State retains the right to serve therein all civil and criminal process issuing under authority of the said State, and all lands so held and title to which is vested in the United States shall be and remain exempt from all state, parochial, municipal or other taxation, assessment or other charges which may be levied or imposed by or under authority of this State.

Section 2. That all laws or parts of laws which are in conflict with the provisions hereof are hereby repealed to the extent of such conflict.

Section 3. The necessity for the immediate passage of this act having been certified to the Legislature, by the Governor, while the legislature is in session, this act shall become effective immediately upon approval by the Governor.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY, PETITIONER

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

No. 354

NATURAL GAS AND OIL CORPORATION AND MISSISSIPPI RIVER FUEL CORPORATION, PETITIONERS

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Although the United States has no financial stake in the outcome of these cases, the basic question in suit—whether the United States has exclusive jurisdiction over Barksdale Air Force—is a matter of primary concern to the United States. Upon the answer

to that question turns not only the susceptibility of persons doing business or having property on the Base to State taxation but also the applicability within the Base of the State's criminal and civil law.

As the petitions for certiorari fully demonstrate, the decision below is clearly wrong. There can be no question that, upon the acquisition of the Base in 1930 with the express consent of, and grant of exclusive jurisdiction by, the Louisiana legislature (see No. 329, Pet. 10–11), the United States acquired the power accorded by the United States Constitution (Art. I, § 8, cl. 17) "To exercise exclusive Legislation in all Cases whatsoever" in the area acquired. It is equally clear that a State lacks power to tax property located within an area of exclusive federal jurisdiction. *Surplus Trading Co.* v. *Cook*, 281 U.S. 647. Any intimation to the contrary in the opinion below or in that of the Louisiana Supreme Court in *Murphy Corp.* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, which the court below followed, is a product of the persistent confusion in those opinions of the questions of the *immunity* of the United States and its instrumentalities from State taxation and of a State's lack of *jurisdiction* within federal enclaves.

Nothing has occurred since 1930 to cause the loss of the exclusive jurisdiction over the Base then acquired. Exclusive jurisdiction is not lost either by the lease of property within the enclave for commercial use (*Arlington Hotel Co.* v. *Fant*, 278 U.S. 439) or by a grant to a public utility of a right of way across the enclave (*United States* v. *Unzeuta*, 281 U.S. 138). And the

suggestion that the Base's purchase of water from the Parish and the attendance of Base children at State schools (for which the United States makes a contribution to the schools) "manifested an intent on the part of the Federal Government not to exercise" or to "accept" exclusive jurisdiction (No. 329, Pet. 47, 32), is a *non sequitur* requiring no answer.

The final circumstance relied upon by the court below to find a waiver of jurisdiction was the inclusion in the oil lease of a provision requiring the lessee "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States" upon the property of the lessee. That clause, a standard provision routinely included in all oil leases, only allocates the responsibility between lessor and lessee to see to the payment of whatever taxes are otherwise "lawfully assessed" and in no way purports to confer a jurisdiction to tax otherwise lacking. In any event, a waiver of exclusive jurisdiction to permit the assessment of State taxes within an enclave can be made only by Congress (as it did for gasoline, sales, and income taxes in the so-called Buck Act, 4 U.S.C. 104–110), not by an administrative agreement to a clause in an oil lease.

The question is important. Apart from the District of Columbia, there are within the United States more than 5,000 areas, on which about a million persons reside, that are considered by the United States to be within its exclusive jurisdiction. If such events as the lease of property within the enclave to private enterprises, the purchase of water from municipali-

ties, or the use of the local school system may cause a loss of exclusive jurisdiction, as the court below seems to hold,[1] the status of many, if not most, of those areas—and the laws by which their residents are governed—has been cast in doubt.

For the reasons stated above and in the petitions, the petitions for certiorari in these cases should be granted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
ROGER P. MARQUIS,
Attorney.

SEPTEMBER 1963.

[1] Nor can the decision be explained as a mere aberration unlikely to be repeated. The decision of the Court of Appeal here merely follows the prior decision of the Louisiana Supreme Court in the *Murphy* case, *supra*, holding that Louisiana could impose a severance tax on the production of gas and oil within the Base. See also *International Business Machines Corp.* v. *Ott*, 230 La. 666, 89 So. 2d 198. The Louisiana Supreme Court's comment, in denying review of the decision below in this case, that the judgment "is correct" (No. 329, Pet. 51), is but a final reaffirmation of the settled view of the Louisiana courts. The imposition of the severance tax on oil and gas production within the Base has also been upheld by the United States Court of Appeals for the Fifth Circuit. *Mississippi River Fuel Corp.* v. *Fontenot*, 234 F. 2d 898, certiorari denied, 352 U.S. 916.

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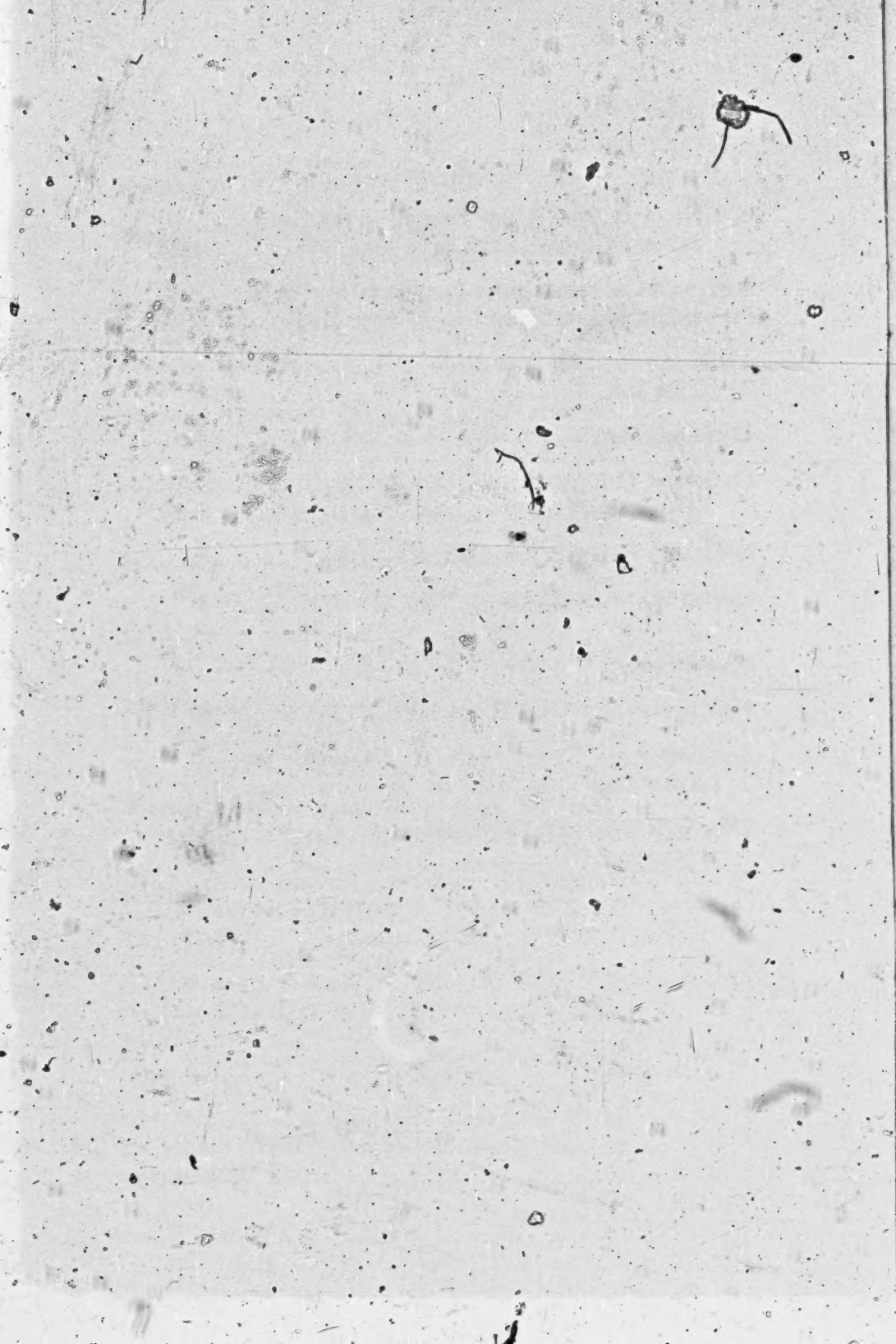

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY,

Petitioner,

versus

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF PARISH OF BOSSIER, LOUISIANA,

Respondent.

On Writ of Certiorari to the Court of Appeal Second Circuit, State of Louisiana

---

BRIEF FOR HUMBLE PIPE LINE COMPANY

OPINIONS BELOW

The opinion of the Court of Appeal, Second Circuit, State of Louisiana *(R. 38)* is reported at 151 So. 2d 575. The decree of the Supreme Court of the State refusing application for certiorari to review the opinion of the Court of Appeal *(R. 67)* is reported at 152 So. 2d 561, 244 La. 463.

JURISDICTION

The opinion and judgment of the Court of Appeal, Second Circuit, State of Louisiana, in this case — in effect affirmed by the Supreme Court of the State — rejected Petitioner's contention that the State of Louisiana and its political subdivisions were without jurisdiction to levy ad valorem taxes upon private property located inside the boundaries of Barksdale Air Force Base — a military establishment or post situated in the Parish of Bossier, Louisiana — for the reason that the lands forming the post area were acquired by the United States with the consent of the State, thus vesting "exclusive legislation" (jurisdiction) over the area so acquired in the Congress of the United States under the provisions of Art. 1, § 8, cl. 17, of the Constitution of the United States.

The judgment of the Court of Appeal, Second Circuit, State of Louisiana *(R. 49)* was entered February 7, 1963. Application for a rehearing denied by that court (R. 49) on April 1, 1963, and timely application for a writ of certiorari to review the judgment of the Court of Appeal refused by the Supreme Court of the State *(R. 67)* on May 14, 1963, when the judgment of the Court of Appeal became final under La. C.C.P., art. 2617. The issuance of the mandate of the Court of Appeal, State of Louisiana, was stayed by order entered by that court on May 16, 1963, and the petition to this Honorable Court for a writ of certiorari was filed August 2, 1963.

The jurisdiction of this Honorable Court to review the federal question involved arising under the Constitution of the United States is invoked under 28 USCA, par. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions and statutes involved are:

United States Constitution, Art. 1, §8, cl. 17:

"The Congress shall have Power

. . . .

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles, square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . . ."

Louisiana Constitution — LSA-Const. Art. 4, § 12, par. 2, authorizing the State and its political subdivisions to donate lands to the United States for military uses, etc.:

"Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, . . . in connection with airports, flying fields, landing fields, . . . military posts, and for military uses; and for the purpose of acquisition and improvement of property for such pur-

poses, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution."

(see Appendix, *infra* p. 26, for complete text.)

Act No. 4 of the Regular Session of the Legislature of Louisiana for the year 1930, donating certain lands and water bottoms within the limits Barksdale Air Force Base to the United States:

"Whereas, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport, flying field, landing field, military post and military uses; and

"Whereas, the United States of America will not accept said tract of land without the inclusion of this property within said tract belonging to the State of Louisiana; and

. . . .

". . . . now therefore

"Be is enacted by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous, and lagoons, whether navigable or non-navigable, lying within the following described area . . . be and is hereby donated to the United States of America for an air port, flying field, landing field, military, post and for military purposes."

(see Appendix, *infra*, p. 27, for complete text.)

In addition to the special legislative authority referred to relating to the particular means by which the lands involved were acquired by the United States, there

have been in effect, at all times relevant, statutes of the State generally ceding jurisdiction to the United States over lands required for forts, magazines, etc. (set forth in the appendix, infra p. 29, 31) which were embodied in the Revised Statutes of the State[1] as follows:

> "The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.
>
> "The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."
>
> *LSA-R.S. 52:1*

QUESTIONS PRESENTED

In its opinion rendered herein, the Court of Appeal, Second Circuit, State of Louisiana, apparently conceded that the constitutional provisions and statutes of the State of Louisiana referred to herein evidence the unqualified consent of the State to the acquisition of the lands of Barksdale Air Force Base by the United States for military uses as required under Art. 1, § 8, cl. 17, of the

(1) No question need arise under any statutory "cession" because acquisitions by the United States of the particular character involved were specially authorized.

Constitution of the United States to vest exclusive jurisdiction over lands so acquired in the Federal government, but the court found that "circumstances" referred to in its opinion "evidence the intention of the United States not to accept exclusive jurisdiction over the area donated."

The principal questions presented consequently are:

Whether or not "circumstances" referred to in the opinion of the Court of Appeal — consisting of the mere purchase of public utility supplies from political subdivisions of the State for consumption and use upon the Air Force Base and the fact that children of those residing upon the Post attended the public schools of the Parish outside the Post area — were incompatible with the exercise of exclusive jurisdiction or should be construed as evidence of the intention of the United States (Department of the Air Force) not to accept exclusive jurisdiction over the Federal enclave when those furnishing utility supplies performed no services within the Post area and the Parish school system received a per capita charge for each child attending its schools;

Whether or not petitioner's use of a right of way (easement or servitude) for the maintenance of its pipelines across the lands of the Air Force Base has been in any sense incompatible with the exercise of exclusive jurisdiction over the Post area by the Department of the Air Force; and

Whether or not the State of Louisiana and its political subdivisions could (under the circumstances referred to) have validly levied ad valorem taxes for the

year involved on that portion of petitioner's interstate pipelines extending across lands of Barksdale Air Force Base acquired by the United States with the consent of the Legislature of the State.

STATEMENT OF THE CASE

During the year 1930, the United States acquired title to a tract of lands containing approximately 22,000 acres situated in the Parish of Bossier, Louisiana, through and by virtue of acts of donation executed by the City of Shreveport, Louisiana, the State of Louisiana, and the Bossier Levee District (a political corporation of the State) pursuant to authority granted under Art. IV, § 12, of the Constitution of the State (supra), which acts of donation were made and executed upon the condition that the United States would establish and maintain a military air force base upon the lands conveyed. During the years 1930, 1931 and 1932, the government of the United States caused extensive runways, administration buildings, living quarters, barracks, hangars and other structures and facilities required for the maintenance of a military air force post or base to be constructed upon the lands so acquired, costing many millions of dollars, which properties and constructions thereon (as an entity) now known as "Barksdale Field" or "Barksdale Air Force Base" have been maintained by the government at all times since as required by military air force demands (see admissions of fact, R 7).

On January 1, 1953, Interstate Oil Pipe Line Company, a corporation of the State of Delaware — the name

of which was changed by charter amendment effective July 31, 1961, to Humble Pipe Line Company (R 17).[2] — owned two interstate pipelines, each of which extended 2.91 miles within the area referred to as Barksdale Field. In preparing and compiling the assessments of oil pipelines for ad valorem tax purposes for the year 1953, the Louisiana Tax Commission included that portion of the pipelines of Interstate Oil Pipe Line Company situated within the limits of Barksdale Field, extending valuations thereon at standard rates aggregating $81,430.00, upon which assessments the State and its political subdivisions having general authority to tax in Ward 2, Bossier Parish, Louisiana, then imposed ad valorem taxes aggregating $1,315.36 (R. 10).

The taxes levied as set forth were paid under protest on December 30, 1953 (R. 11) and this suit instituted on the 5th day of January, 1954 (R. 2) to recover the amount so paid as permitted under the provisions of LSA-R.S. 47:2110 (Appendix p. 32) upon the grounds as stated in the petition, paragraphs 3 and 4 (R. 2):

> "That the conveyances referred to — through which the lands described were acquired by the United States — were executed with the consent and approval of the State of Louisiana in accordance with the provisions of the laws of the State relating thereto, under the terms of which exclusive jurisdiction of the lands conveyed was ceded or granted to the

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(2) The name Humble Pipe Line Company was substituted for that of Interstate Oil Pipe Line Company as plaintiff in this action by order of the trial court dated October 4, 1962 (R. 17).

United States except in respect to the service of process issuing under State authority.

"That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described completely ousted all jurisdiction and authority of the State and its political subdivisions within such area (including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon — no such authority having been conferred by Act of Congress."

Petitioner's demands for refund of the taxes paid were rejected by the trial court and that judgment affirmed on appeal (R. 38) for reasons set forth in the opinion of the appellate court as follows:

"The circumstances evidence the intention of the United States not to accept exclusive jurisdiction over the area donated for Barksdale Air Force Base. . . ." (R. 45)

. . . .

"The testimony shows conclusively that, just as in the International Business Machines Corporation case, supra,(3) the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation

(3) *International Business Machines Corp. v. Ott*, 230 La. 666, 89 So.2d 193.

or that the Federal Government pays to the parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the State and Parish authorities for these services. Just as in the International Business Machines Corporation case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects." (R. 47)

. . . .

"Plaintiff Humble Pipe Line Company is vested with a servitude across the lands of Barksdale Air Force Base under which its lines pass. The existence of this real right evidences an imperfect ownership of the Government in the area traversed by the pipelines. Thus, as to the area subjected to to the servitude the government possesses only the naked ownership." (R. 47)

. . . .

". . . Here, either the Government took the lands donated to it subject to the plaintiff's existing right of servitude, or a grant of right of way was made to the plaintiff by the Government. The record does not show which was the case. Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the S. R. A. case,(4) it relinquished same." (R. 48)

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(4) *S.R.A., Inc. v. Minnesota*, 327 U.S. 558, 66 Supp. Ct. 749, 90 L. ed 851.

SUMMARY OF ARGUMENT

1. The respondent and the courts below concede the rule of law which vests in Congress exclusive jurisdiction over lands acquired by the United States with the consent of the Legislature of the state in which located for the erection of "forts, magazines," etc., and concede that Barksdale Air Force Base was acquired by the United States for those purposes with the consent of the State of Louisiana, but seek to avoid the invalidity of the ad valorem taxes involved by the assertion that the "circumstances" evidence the intention of the United States not to accept exclusive jurisdiction over the area.

2. However, none of the "circumstances" referred to by the courts — consisting merely of the purchase of utility supplies from municipalities of the State, the attendance of the children of servicemen in local public schools, and the fact that the petitioner holds an easement or servitude for the maintenance of its pipelines across the Post area — has been in any sense incompatible or in conflict with the exercise of the power of exclusive legislation over the enclave by the Post Command.

(a) To the extent that any municipal corporation of the State may have sold utility supplies to the Post Command, the municipality acted in a strictly proprietary capacity in private enterprise. The sales consummated at the Post "gate" were the same as any other purchase from private sources and cannot be regulated by state law.

(b) That children of parents residing upon the Post attended the local public schools by arrange-

ment made with the local authorities for the payment of tuition fees as authorized by act of Congress was in fact an acknowledgment that the Air Force Base was subject to the power of exclusive legislation since otherwise the arrangement would have been unnecessary.

(c) An easement for the maintenance of pipelines across a government enclave is in no sense incompatible with the power of exclusive legislation.

3. A state has no power to tax private interests within a Federal enclave subject to the power of exclusive legislation except as permitted by act of Congress.

4. The entire area of Barksdale Air Force Base having been dedicated to military uses by the Department of the Air Force, it is not open to the courts to inquire what may be the uses to which any portion of the area is temporarily put.

ARGUMENT

The controlling question presented in this cause is one purely of jurisdiction — the law applicable having been specifically set forth in paragraph 8 of the syllabus of the opinion rendered in *Surplus Trading Company v. Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. ed. 1091, as follows:

"Private personal property located within an Army camp, the lands for which were acquired by the

> United States with the consent of the legislature of the state in which such lands are situated, cannot be subjected to state taxation, in view of the provisions of article 1, § 8, cl. 17, of the Constitution, giving Congress exclusive legislative authority over places so acquired."

And the rule as so expressed has been uniformly observed to preclude the states from taxing within an area subject to the power of "exclusive legislation" except as specially permitted by act of Congress so long as the proprietary interest of the government over such area continues.

> *Pacific Coast Dairy v. Department of Agriculture*, 318 U.S. 285, 63 S. Ct. 628, 87 L. ed. 761;
>
> *Offutt Housing Company v. Sarpy Co.*, 351 U.S. 253, 76 S. Ct. 814, 100 L. ed. 1151;
>
> *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 58 S. Ct. 1009, 82 L. ed. 1502;
>
> *Silas Mason Co. v. Tax Commission*, 302 U.S. 186, 58 S. Ct. 233, 82 L. ed. 187;
>
> *James v. Dravo Contracting Company*, 302 U.S. 134, 58 S. Ct. 208, 82 L. ed. 155.

It has not been questioned that Barksdale Air Force Base comes within the words "forts, magazines, arsenals", etc., as those terms are used in Art. 1, § 8, cl. 17, of the Constitution of the United States, nor has it been questioned that the 22,000 acres of lands upon which the Post is

located were "purchased" by the United States with the consent of the Louisiana Legislature.(5)

Although the answer of the respondent herein was a mere general denial setting forth no affirmative defenses, the position of the taxing authorities and of the courts below has been one of confession and avoidance; confession that the law operates to exclude the authority of the State within the Federal territory, but avoidance of the conclusion of invalidity by the assertion that the United States has, through the "circumstances" referred to, evidenced an intention not to accept — or to relinquish — exclusive jurisdiction.

At the time of the acquisition of the lands involved (1930), the act of October 9, 1940 (40 USCA, par. 255) had not been enacted. The consent of the State to Federal jurisdiction was then required before public monies could be expended (R.S. § 355) and the acceptance by the United States of the power ceded at that time is presumed.

S.R.A. v. Minnesota, 327 U.S. 558, 66 S. Ct. 749, 90 L. ed. 851.

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(5) The conveyances were made upon the condition that the United States would establish and maintain a military air force base upon the lands conveyed, and that condition was fulfilled at tremendous cost. The conveyances consequently were not real donations, but commutative contracts. *La. R.C.C.*, Art. 1524; *Thompson v. Societe Catholique d'Education Religieuse et Litteraire*, 157 La. 875, 103 So. 247. The term "purchase" in its legal sense is defined in *Webster's International Dictionary* as follows: "Law. Technically, to acquire (real estate) by any means whatever other than by descent or inheritance." See also, Annotation (c) to case of *U. S. v. Unzeuta*, 74 L. ed. 764.

The remaining issue consequently is merely whether or not the so-called "circumstances" mentioned in the opinion of the Court of Appeal were incompatible with the power of "exclusive legislation" over the Post area or evidenced any intention in respect thereto. We shall refer to the so-called circumstances separately.

The Purchase of utility supplies.

There has been no proof that any specific utility supplies were purchased from any state political corporation or municipality. The sole basis for any consideration of such purchases arises from the general statement made by Col. Hanlon (Post Commander) that the Post Command was "dependent" upon those sources for public utilities (R. 23). His deposition, however, was specific in disclosing that whatever utility supplies were obtained from municipal sources were purchased and delivered at the Post "gate" and that the furnishers of those supplies had nothing to do with distribution within the Post area (R. 23, 24).

To whatever extent any municipal corporation of the State may have sold water, electricity or other utility supplies to the Post Command, it is clear that such sales (consummated outside the limits of the municipality) were made by the municipal corporation in a strictly proprietary capacity and that in respect thereto the municipal corporation was engaged in private enterprise.

Olivedell Plant Co. v. Town of Lake Providence, 217 La. 622, 47 So. 2d 23.

The State municipal corporation delivering such supplies at the Post gate performed no function of any kind within the Federal enclave. The sale was the same as any other purchase from private sources, and it is settled that contracts to sell and sales consummated within a government enclave cannot be regulated by state law; for to hold otherwise would be a denial of the Federal power "to exercise exclusive legislation.".

> *Pacific Coast Dairy v. Department of Agriculture*, 318 U.S. 285, 63 S. Ct. 628, 87 L. ed. 761;
>
> *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 58 S. Ct. 1009, 82 L. ed. 1502;
>
> *Murphy v. Love*, 249 Fed. 2d 783.

The manner in which the purchases referred to have been made and the supplies handled for consumption actually accentuate the exercise of exclusive jurisdiction by the Post Command.

School Attendance

It has been generally conceded that where a Federal enclave is subject to the power of "exclusive legislation", the state within which it is located has no responsibility whatever for public services therein, including public education;

> *State ex rel. Moore v. Board of Education of Euclid City*, 57 N.E. 2d 118, and authorities cited therein;
>
> See also cases cited in Annotation appearing at 83 A.L.R. 2d 508;

and the rule seems to apply even when a state has reserved the power of taxation in ceding jurisdiction to the United States.

In re Annexation of Reno Quartermaster Depot Reservation, 69 Pac. 2d 659.

Congress has consequently made provision to make school facilities available to the children of parents residing upon government property under virtually all circumstances, e.g. 20 USCA 241, et seq. Louisiana has no law making any specific provision for public education of children residing on government property and the acceptance of the per capita tuition paid to the local school systems for the attendance of each child residing upon the Barksdale Air Force Base pursuant to arrangements particularly authorized by act of Congress was in fact a concession by the local school authorities that the area was subject to the exclusive jurisdiction of the United States. The arrangements made were the normal arrangements provided for the education of children residing upon property of the United States subject to the power of exclusive legislation.

Petitioner's Right of Way.

The stipulation of facts admitted in this cause discloses that the public is not permitted freedom of access to any portion of the lands within the limits of Barksdale Field traversed by the pipelines of petitioner and that its agents and employees have not been permitted upon those premises for the purpose of inspection and maintenance except when accompanied by a military guard or

escort. (R. 10) The admission is an admission of exclusive jurisdiction over the pipeline area and the fact of the maintenance of the lines is not in any sense in conflict with that jurisdiction. The question, we submit, was definitely settled in *United States v. Unzeuta*, 281 U.S. 138, 50 S. Ct. 284, 74 L. ed. 761.

A state has no power to tax private interests within a Federal enclave subject to the power of exclusive legislation except as permitted by act of Congress.

The question of exclusive territorial jurisdiction is distinct.

> ". . . That question assumes the absence of any interference with the exercise of the functions of the Federal Government and is whether the United States has acquired exclusive legislative authority so as to debar the State from exercising any legislative authority including its taxing and police power in relation to the property and activities of individuals and corporations within the territory. The acquisition of title by the United States is not sufficient to effect that exclusion. It must appear that the State, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise. Surplus Trading Co. v. Cook, 281 U.S. 647, 650-652, 74 L. ed. 1091, 1094, 1095, 50 S.Ct. 455; James v. Dravo Contracting Co., 302 U.S. 134, ante, 155, 58 S.Ct. 208, 114 A.L.R. 318, supra. See also Ft. Leavenworth R. Co. v. Lowe, 114 U.S. 525, 527, 539, 29 L. ed. 264, 265, 269, 5 S.Ct. 995; Arlington Hotel Co. v. Fant, 278 U.S. 439, 451, 73 L. ed. 447, 450,

49 S.Ct. 227; United States v. Unzeuta, 281 U.S. 138, 142, 74 L. ed. 761, 773, 50 S.Ct. 284.

. . . .

". . . That question, however, involving the extent of the jurisdiction of the United States, is necessarily a Federal question. Brewer-Elliott Oil & Gas Co. v. United States, 260 U.S. 77, 87, 67 L. ed. 140, 145, 43 S.Ct. 60; United States v. Utah, 283 U.S. 64, 75, 75 L.ed. 844, 849, 51 S.Ct. 438; Borax Consolidated v. Los Angeles, 296 U.S. 10, 22, 80 L. ed. 9, 17, 56 S.Ct. 23."

Silas Mason Co. v. Tax Commission, 302 U.S. 196.

We are not concerned in this case with any question of reservation of any jurisdiction of the State of Louisiana for any purpose whatever in any act of cession or otherwise. The lands acquired by the United States were acquired with the unqualified consent of the State, thus vesting exclusive jurisdiction in the Federal government.

Under the Buck Act (4 USCA § 104, et seq.), the states have been permitted to impose certain excise taxes within Federal areas and the Military Leasing Act of 1947 and the Wherry Military Housing Act of 1949 (10 USC § 1270) were construed to permit the state taxation involved in *Offutt Housing Company v. Sarpy*, supra. In that case the court, in referring to the power of "exclusive legislation" vested in Congress under the constitutional provision, said:

". . . The power of 'exclusive Legislation' has been held to prohibit a state tax on private property

located on a military base acquired pursuant to Art. 1, § 8, cl. 17. Surplus Trading Co. v. Cook, 281 US 647, 74 L ed 1091, 50 S Ct 455. On the other hand, the State may acquire the right to tax private interests within such a location by permission of Congress, see, e.g., the Buck Act, 54 Stat 1059 (permitting state sales, use, and income taxes), ...

". . . We do not hold that Congress has relinquished this power over these areas. We hold only that Congress, in the exercise of this power, has permitted such taxation as is involved in the present case."

(351 U.S. 256-257, 260-261)

In *Howard v. Commissioners of the Sinking Fund, City of Louisville*, 344 U.S. 624, 73 S. Ct. 465, 97 L. ed. 617, involving an ordinance of the City of Louisville construed to impose an income tax, it was stated that:

"Even though the Ordnance Plant is within the boundaries of the City of Louisville pursuant to the annexation, exclusive jurisdiction over the area still remains with the United States, except as modified by statute. US Const. Art. I, § 8, cl 17; Surplus Trading Co. v. Cook, 281 US 647, 652 74 L ed 1091, 1095, 50 S Ct 455."

(344 U.S. 627)

The effect of vesting of exclusive jurisdiction over Federal property is clearly stated in *Arledge v. Mabry*, 52 N.M. 303, 197 Pac. 2d 884, as follows:

"To the extent any of the acts and things done on the condemned area in an application of state law are outside the purview of congressional authorization,

they cannot impinge upon the exclusive jurisdiction of the federal government otherwise obtaining. If exclusive jurisdiction over certain landed areas be ceded to the United States by a state, such jurisdiction cannot be recaptured by the state by later statute without consent of the United States. Rogers v. Squier, 9 Cir., 157 F. 2d 948; United States v. Unzeuta, 281 U.S. 138, 50 S.Ct. 284, 74 L. Ed. 761."

(197 Pac. 2d 895)

To same effect, see *Kingwood Oil Company v. Henderson County Bd. of Supervisors* (Ky.), 367 S.W. 2d 129.

It has been broadly stated that the power to tax has no limits and carries with it inherently the power to embarrass and destroy. See *Magnano Co. v. Hamilton*, 292 U.S. 40, 54 S. Ct. 599, 78 L. ed. 1109.

It is probably in this view of the danger of the power that Congress has not conferred upon the states a general power to tax private interests within properties over which the United States has exclusive jurisdiction. Efforts to impose regulations within government areas through the guise of allegedly permissible taxation have been held invalid,

Collins v. Yosemite Park & Curry Co., supra,
Murphy v. Love, supra;

and it is apparent that there should be effective safeguards against efforts to impose regulatory provisions by that means for the same reasons which caused the adoption of the Constitutional provision itself. To vest in the states an uncontrolled power to tax private interests upon government property would create obviously dangerous conflicts with the power of exclusive legislation.

The proprietary interest of the United States in Barksdale Air Force Base has continued at all times since the acquisition of the property for military uses. None of the so-called circumstances referred to by the courts below have been incompatible or in any sense in conflict with the exercise of exclusive jurisdiction over the Post area by the Post Command and no act of Congress permits the State of Louisiana and its subdivisions to levy ad valorem taxes upon private property located within the area subject to the power of exclusive legislation. The ad valorem taxes levied by those taxing authorities were consequently invalid.

Petitioner's pipelines do not traverse any portion of the area of Barksdale Field subject to oil, gas and mineral leases.

The record in the cases of Natural Gas & Oil Corporation and Mississippi River Fuel Corporation (No. 354) with which the case of Humble (No. 329) has been consolidated discloses that approximately 2,060 acres of the 22,000 acres of Barksdale Air Force Base are covered by an oil, gas and mineral lease now held by the petitioners in Docket No. 354. However, it is admitted that the lands traversed by Humble's pipelines have been used at all times exclusively for military purposes, include no part of the leased area, and that Humble's pipeline operations have no connection or relationship to the production of oil from the leased acreage (R. 9, 10).

If there has been any action which might be construed under the authority of any statute of the United

States (of which we have no information) as permitting the State to levy ad valorem taxes upon private property within Barksdale Field, that permissive authority must be restricted to the leased area which is not traversed by Humble's lines. In the course of its opinion herein, the Court of Appeal of Louisiana said:

> "Although the land traversed by plaintiff Humble Pipe Line Company's lines is not a part of the East Reservation of Barksdale Air Force Base, the portion of which is covered by the oil, gas and mineral lease, or leases, involved in the companion cases, we may point out that the lease provision, Section 2, under Rents and Royalties (7) (K), which imposed upon the lessee the obligation to pay all State taxes, evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base. This plaintiff cannot clothe itself with the mantle of governmental immunity any more so than could the Murphy Corporation in the cited case in the State Court(6) or the Mississippi River Fuel Corporation in the cited case in the Federal Court.(7) Its sole claim to immunity is the fact that its physical property is situated within the enclosure of Barksdale Air Force Base."
>
> (R. 47)

It is quite clear that lands acquired by the United States for military uses with the consent of the state in which located are subject to the power of the exclusive legislation of the government, which precludes any right

(6) *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So.2d 180; cert. denied 348 U.S. 831, 75 S.Ct. 54, 99 L. ed. 655.

(7) *Mississippi River Fuel Corporation v. Fontenot*, 234 F.2d 898; cert. denied 352 U.S. 916, 77 S.Ct. 213, 1 L.ed 2d 122.

of state ad valorem taxation within the area. In respect to the extent of such jurisdiction over any specific part of lands so acquired, this Court in *Benson v. United States*, 146 U.S. 325, 36 L. ed. 991, said:

> "It is contended by appellant's counsel that, within the scope of those decisions, jurisdiction passed to the general government only over such portions of the reserve as are actually used for military purposes, and that the particular part of the reserve on which the crime charged was committed was used solely for farming purposes. But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. United States v. Stone, 69 U.S. 2 Wall, 525, 537 [17:765, 767]. The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. . ."
>
> (146 U.S. 331)

See also, *Arlington Hotel Co. v. Fant*, 278 U.S. 439, 49 S. Ct. 227, 73 L. ed. 447.

In accordance with the original plans for the establishment of Barksdale Air Force Base, the Department of the Air Force adapted the entire field to its uses, and it is not within the province of a state court to attempt to say that the jurisdiction so acquired has been relinquished over any part of the area unless there has been a specific relinquishment in respect to a particular part thereof pursuant to authority of an act of Congress as

this Court found in *Offutt Housing Company v. Sarpy Co.*, supra.

The statement in the opinion of the state court to the effect that "this plaintiff cannot clothe itself with the mantle of governmental immunity" is merely demonstrative of the persistence of the court in confusing the doctrine of governmental immunity from state taxation with the question of territorial jurisdiction as evidenced particularly by its treatment of the decision in *James v. Dravo Contracting Company*, supra. In this same connection, the decision of the Louisiana Supreme Court in *International Business Machines Corporation v. Ott*, 230 La. 666, 89 So. 2d 193 (upon which the Court of Appeal largely relied), should be compared with *International Business Machines Corporation v. Vaughn* (Fla.), 98 So. 2d 747.

CONCLUSION

For the reasons assigned, it is respectfully submitted that the judgment of the Court of Appeal, Second Circuit, State of Louisiana, should be reversed and judgment rendered in favor of petitioner for refund of the amount of the taxes involved, with interest, as prayed for.

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APPENDIX

&

Louisiana Constitution — LSA - Const. Art. 4, § 12, par. 2:

"Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States, any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase donation, expropriation or otherwise, for the following public purposes; use, in connection with the improvement and maintenance of the navigation of natural waterways, the construction and improvement and maintenance of artificial navigable waterways and river and harbor works of every description and kind authorized by any Act or Acts of the Congress of the United States or Federal Statutes, or otherwise, and in connection with flood control works of every description and kind so authorized, or in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; and for the purpose of acquisition and improvement of property for such purposes, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution."

Act No. 4 of the Regular Session of the Legislature of Louisiana for the year 1930.

"Section 1. Whereas, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport, flying field, landing field, military post and military uses; and

"Whereas, the United States of America will not accept said tract of land without the inclusion of this property within said tract belonging to the State of Louisiana, and

"Whereas, said project is a great benefit to the State of Louisiana, and to the very vital cause of national defense;

"Whereas, the State of Louisiana is authorized by its Constitution to donate its property to the United States of America by fee simple title for such purposes; now therefore

"Be it enacted by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within the following described area, All of Township 18 North, Range 12 West, South of the Vicksburg, Shreveport and Pacific Railway Company's right of way; all of Township 18 North, 13 West, South of Vicksburg, Shreveport and Pacific Railway Company's right of way, South and East of the North and West high bank of Cross Bayou and East of the West high bank of Mack's Bayou; Also, all of Sections 1, 2 and 3 Township 17 North, Range 13 West, lying East of the right of way of the Louisiana Railway

and Navigation Company; all of Sections 1, 2, 3, 4, 5 and 6; the northeast Quarter (NE ¼) of Section 7, All of Sections 8, 9, 10, 11 and 12; the East Half of Northeast Quarter (E ½ of NE¼) of Section 17; the North Half (N ½) of Section 16, and the Northwest Quarter of Northwest Quarter (NW¼ of NW¼) Section 15, Township 17 North, Range 12 West; all of Section 19 South of the right of way of the Vicksburg, Shreveport and Pacific Railway, and all of Sections 30 and 31, Township 18 North, Range 11 West, and the West 3/4 of Sections 6 and 7, Township 17 North, Range 11 West; with particular reference to Red Chute Bayou, Mack's Bayou, Cross Bayou, Alligator Bayou, Mussell Shell Bayou, Clear Lake, Moon Lake and Flag Lake and other Lakes, lagoons, streams and bayous within the above described area, whether named herein or not, situated in Bossier Parish, Louisiana, be and is hereby donated to the United States of America for an air port, flying field, landing field, military post and for military purposes."

Act No. 31 of the Regular Session of the Legislature of Louisiana for the year 1942.

"To amend and re-enact Sections 1 and 2 of Act No. 12 of the Regular Session of 1892; entitled: 'An Act To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof, and to repeal all acts in conflict therewith.

"Section 1. Be it enacted by the Legislature of Louisiana That Sections 1 and 2 of Act No. 12 of 1892 be amended and reenacted so as to read as follows:

"Section 1. Be it enacted by the Legislature of Louisiana, That the consent of the State of Louisiana is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this State required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States.

"Section 2. That the United States may enter upon and occupy any land in the State of Louisiana which it has heretofore acquired, or may hereafter acquire, by purchase, condemnation, lease or otherwise, required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States, and shall have the right of exclusive jurisdiction over the property so acquired, during the time that the United States shall be or remain the owner or lessee thereof, for all purposes, except that the State retains the right to serve therein all

civil and criminal process issuing under authority of the said State, and all lands so held and title to which is vested in the United States shall be and remain exempt from all state, parochial, municipal or other taxation, assessment or other charges which may be levied or imposed by or under authority of this State.

"Section 2. That all laws or parts of laws which are in conflict with the provisions hereof are hereby repealed to the extent of such conflict.

"Section 3. The necessity for the immediate passage of this act having been certified to the Legislature, by the Governor, while the legislature is in session, this act shall become effective immediately upon approval by the Governor."

Act No. 12 of the General Assembly of the State of Louisiana, at the Regular Session of 1892.

"To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

Section 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation."

LSA-R.S. 47:2110

"No court of this state shall issue any process whatsoever to restrain the collection of an ad valorem tax imposed by the state, or by any political subdivision thereof, under authority granted to it by the legislature or by the constitution. Any person resisting the payment of any amount of tax found due, or the enforcement of any provision of the tax laws in relation thereto, shall pay the amount found due to the officer designated by law for the collection of such tax and shall give the officer notice at the time of payment of his intention to file suit for the recovery of such tax. Upon receipt of such notice, the amount so paid shall be segregated and held by the officer for a period of thirty days. If suit be filed within such time for the recovery of the tax, such amount so segregated shall be further held pending the outcome of the suit. If the taxpayer prevails, the officer shall refund the amount to the taxpayer with interest at the rate of two per centum (2%) per annum for the period from the date such funds were received by the officer to the date of such refund."

SUPREME COURT, U. S.

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No. 329

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUMBLE PIPELINE COMPANY,

Petitioner

vs.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,

Respondent

On Petition of Humble Pipeline Company for Writ of Certiorari to the Court of Appeal, Second Circuit, State of Louisiana.

BRIEF OF RESPONDENT ON THE MERITS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 329

HUMBLE PIPELINE COMPANY,

Petitioner

vs.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,

Respondent

On Petition of Humble Pipeline Company for Writ of Certiorari to the Court of Appeal, Second Circuit, State of Louisiana.

BRIEF OF RESPONDENT ON THE MERITS

QUESTION INVOLVED

The sole question which is presented for determination in this case is whether or not the State of Louisiana, and its taxing authorities, in Ward Two of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the plaintiffs, used and maintained by them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base.

STATEMENT OF THE CASE

In each of these cases, the respective taxpayer seeks to recover, pursuant to State law (LSA-RS 47:2110), certain ad valorem taxes assessed and levied against it by the State of Louisiana and by its various taxing authorities, in Ward Two of Bossier Parish, Louisiana, and which in each instance were paid by the taxpayer under protest.

In the year 1930, the United States acquired from the State of Louisiana, City of Shreveport, and the Board of Commissioners of the Bossier Levee District (an agency of the State), respectively, certain lands approximating 22,000 acres situated in Bossier Parish, Louisiana. (Interstate Exs. 3, 4, 5; R. 54, 59; R. 64, 69; R. 69, 75-76) The conveyances so made were admittedly donations. (Admissions of Fact R. 16) See, also, *Mississippi River Fuel Corporation v. Fontenot* (CCA 5) 234 F 2d 398, certiorari denied, 352 U S 916, 1 L Ed 2d 122, 77 S Ct 213.

The conveyances were made pursuant to the provisions of LSA-Const. Art. 4 § 12, upon the condition that the grantee would establish, operate and maintain a military air force base upon such lands. During the years 1930, 1931 and 1932, the United States constructed on a relatively small portion of the acreage acquired the contemplated post and facilities known as "Barksdale Field" (name since changed to "Barksdale Air Force Base") and has since maintained the same as required by military air force demands.

Of the total acreage acquired by the United States, as aforesaid, the cantonment area of Barksdale Air Force Base covers about 1,000 to 1,500 acres, and an additional semi-improved part of the base, which includes the air-field proper, comprises another 1,500 acres, leaving about 19,000 acres of unimproved land known as the East Reservation. (R. 79).

Relative solely to the positions of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, the record reveals that in the year 1961, it was determined by the federal government that certain of the acreage within the total area acquired, as aforesaid, was being drained of minerals through wells drilled on privately owned lands; consequently, jurisdiction over 2,060 acres, comprising a part of the vast East Reservation, was transferred pursuant to public Land Order No. 701, dated February 21, 1951 (16 F. R. 1901) and Executive Order No. 9337 of April 24, 1943, from the Department of the Air Force to the Department of the Interior with the provision that: "There is no interference with the primary use of Barksdale Air Force Base." Thereafter, a lease of the transferred acreage for oil and gas purposes was effected (R. 24-45), and pursuant thereto Natural Gas and Oil Corporation drilled certain wells productive of oil and gas. The various oil and gas producing equipment and pipe owned and maintained by said lessee, and situated on said base, in connection with said wells, have been assessed and levied upon as to that taxpayer for ad valorem tax purposes. The said Natural Gas and Oil

Corporation subsequently merged with Mississippi River Fuel Corporation.

In regard to Humble Pipe Line Company (formerly Interstate Oil Pipe Line Company), the taxes herein involved were imposed against its two interstate oil trunk pipelines, of 8-inch and 10-inch diameters, respectively, and extending a distance of 2.91 miles within the acreage acquired by the United States, as aforesaid. The said pipelines are not located within the area covered by the said oil and gas lease, but, instead, are within the developed area of the base or military reservation proper. It is undisputed that none of the production from the wells on the said leased lands is transported or carried through said pipelines.

The same legal principles are generally applicable to the cases of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation (No. 354) and of Humble Pipe Line Company (No. 329), and, therefore, they have been consolidated in this Court, just as they were in the State trial and appellate courts.

SUMMARY OF ARGUMENT

I. (a) The United States did not acquire, by the weight of Art. 1 § 8, cl. 17, of the United States Constitution alone, "exclusive" jurisdiction over the lands which it obtained for Barksdale Air Force Base, because they were procured by donation, and not by purchase or condemnation.

Art. 1 §8, cl. 17, of the United States Constitution; *State ex Rel Board of Com'rs. of Valley County v. Bruce, County Assessor, et al* 69 P 2d 97, affirmed 305 US 577, 83 L Ed 363, 59 S Ct 465; *Paul v. United States*, 371 US 245, 9 L Ed 2d 292, 83 S Ct 426.

(b) The State of Louisiana ceded exclusive legislative jurisdiction to the United States for military purposes.

Act 12 of 1892 of the Louisiana Legislature; Act 31 of 1942 of the Louisiana Legislature; LSA-RS 52:1.

II. (a) The land leased and that traversed by the pipelines were not to be used for the erection of a fort, magazine, arsenal, dock-Yard or other needful buildings for military purposes; and, neither the oil field equipment nor the pipelines sought to be taxed have any logical connection with or benefit to the military purpose of the Air Base.

Murphy Corporation v. Fontenot, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54.

(1) Leased land is set apart and physically separated by fence from the remaining lands of the reservation.

(2) As to the land traversed by the pipelines, the United States has only a naked ownership since a servitude or real right is vested in the pipeline company.

(b) The transfer of a lease to private hands constituted a relinquishment or abandonment of control as to

the land affected, and, if "exclusive" jurisdiction vested in the United States, the reason therefor ended with the reason for its existence and the execution of the lease.

S. R. A. v. Minnesota, 327 US 558, 90 L Ed 851, 66 S Ct 749.

(c) As to the lands traversed by the pipelines, the United States either could never have acquired "exclusive" jurisdiction thereof if the servitude existed at the time of its acquisition, or it relinquished or abandoned such jurisdiction as to said lands if, in fact, it subsequently granted the servitude.

S. R. A. v. Minnesota, 327 US 558, 90 L Ed 851, 66 S Ct 749.

(d) The residual power to tax is retained by the State where the United States acquired land other than by purchase or condemnation, and the land is not used for military purposes.

Fort Leavenworth R. R. Co. v. Lowe, 114 US 525, 29 L Ed 264, 5 S Ct 995.

III. The United States clearly manifested its intention not to accept exclusive jurisdiction by its dependence upon the State and Parish authorities for public utilities and school facilities, and by the insertion in the oil and gas lease of the clause obliging the lessee to pay all taxes due on the production from wells and its other properties physically situated on the leased lands.

Murphy Corporation v. Fontenot, 225 La. 379, 73 So. 2d 180; certiorari denied 348 US

831, 99 L Ed 655, 75 S Ct 54; *International Business Machines Corporation v. Ott*, 230 La. 666, 89 So. 2d 193; Oil and Gas Lease, under Rents and Royalties, (7) (K).

IV. (a) There is no power more basic to the ultimate purpose and function of a State government than is the power to tax.

84 CJS 41, § 4; *Bates v. Little Rock*, 361 US 516, 4 L Ed 2d 480, 80 S Ct 412; *James v. Dravo Contracting Co.*, 302 US 134, 82 L Ed 55, 58 S Ct 208.

(b) The exercise of the State's taxing power has done no violence to Federal right or intent; the record clearly shows that the taxes have not affected, impeded, or interfered in any way whatever with the military or governmental functions of the United States.

(c) The jurdisprudence clearly favors the exercise of a State's jurisdiction in the exaction of a tax where it is not imposed upon, or in any wise affects, the property or functions of the Federal Government.

James v. Dravo Contracting Co., 302 US 134, 82 L Ed 55, 58 S Ct 208; *Fort Leavenworth R. R. Co. v. Lowe*, 114 US 525, 29 L Ed 264, 5 S Ct 995; *Silas Mason Co. v. Tax Commission*, 302 US 186, 82 L Ed 187, 58 S Ct 233; *International Business Machines Corporation v. Ott*, 230 La. 666, 89 So. 2d 193; *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L. Ed 655, 75 S Ct 54; and *Mississippi River Fuel Corporation v. Fontenot*,

234 F 2d 898, certiorari denied, 352 US 916, 1 L Ed 2d 122, 77 S Ct 213.

V. (a) The oil and gas lease is the law of the case as to the lessee.

Murphy Corporation v. Fontenot, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54.

(b) The claims of the taxpayers are based solely upon the fact that their privately owned properties, used and maintained by them in their commercial pursuits are situated on the Air Base; this gives them no right to clothe themselves with the mantle of governmental immunity.

Esso Standard Oil v. Evans (U. S. v. Evans), 345 US 495, 97 L Ed 1174, 73 S Ct 800; *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54; *Mississippi River Fuel Corporation v. Fontenot*, 234 F 2d 898, certiorari denied, 352 US 916, 1 L Ed 2d 122, 77 S Ct 213.

VI. The State's tax laws, which were in existence at the time of the Federal Government's acquisition of such lands, remain enforceable as to privately owned properties, used and maintained in the taxpayers' commercial pursuits.

Arlington Hotel Company v. Fant, 278 US 439, 73 L Ed 447, 49 S Ct 227; *James Stewart & Company v. Sadrakula*, 309 US 94, 99, 100, 84 L Ed 596, 600, 60 S Ct 431, 127 ALR 821; *Paul v. United States*, 371 US 245, 9 L Ed 2d 292, 83 S Ct 426.

ARGUMENT

I.

Land Neither Acquired by Purchase nor Condemnation

It is, indeed, undisputed herein that the lands acquired by the United States were by donation. The language and provisions of the respective instruments of conveyance fully establish and confirm this.

The power of "exclusive" legislation granted to Congress over certain enclaves by Art. 1 § 8, cl. 17, of the United States Constitution, which is relied upon herein by the taxpayers in support of their contention that the State is without power to tax, clearly extends, by its very language, solely to land "purchased" within a state with the consent of its legislature.

The word "purchase", as used in the clause of the Constitution, does not have the technical meaning of the term at common law of an acquisition of lands other than by descent or inheritance, but has the meaning of an acquisition thereof by an actual purchase. *State ex Rel Board of County Com'rs. of Valley County v. Bruce, County Assessor, et al* (S Ct Montana 1937) 69 P 2d 97, affirmed (divided court) 305 U S 577, 83 L Ed 363, 59 S Ct 465.

Property acquired by condemnation, however, has been recognized to come within this meaning. Paul v. United States 371 U S 245, 9 L Ed 2d 292, 83 S Ct 426. In that case, Mr. Justice Douglas, speaking for the majority of the Court, said:

> "Thus if the United States acquires with the 'consent' of the state legislature land within the borders of that State by *purchase or condemnation* for any of the purposes mentioned in Art. 1 § 8, cl. 17, or if the land is acquired without such consent and later the State gives its 'consent', the jurisdiction of the Federal Government becomes 'exclusive'." (emphasis supplied)

Although the constitutional provision has been implemented by the cases to include an acquisition by condemnation, undoubtedly for the reason that it is considered a compulsory sale of one's property, a further expansion of its meaning to include a donation would be entirely alien to its provisions and intent.

The conclusion, therefore, is inescapable that the United States did not acquire, by the weight of said constitutional provision alone, exclusive jurisdiction over the lands in question. However, the consent of the State of Louisiana to the donations, as contained in Act No. 12 of 1892, and as later amended by Act No. 31 of 1942 (embodied in the Louisiana Revised Statutes of 1950 as Title 52, § 1) ceded pursuant to its provisions exclusive legislative jurisdiction to the Federal Government over the lands so acquired.

II.

Neither Leased Lands nor that Traversed by Pipelines Meet Prescribed Purposes

The power of "exclusive" legislation over places "purchased by the consent of the Legislature", which is granted to Congress by Art. 1 § 8, cl. 17, as aforesaid,

is clearly limited to land procured for the "erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings". Moreover, in this instance the State's consent was conditioned upon the use of said land for military purposes.

It is true that the 22,000 acres of land were acquired by the United States for use as an Army Air Force Base. However, the facts unquestionably show that of that total acreage, the cantonment area and semi-improved part of the base, which includes the airfield proper, comprise approximately 2,500 or 3,000 acres, leaving about 19,000 acres of unimproved land known as the East Reservation.

It is in this vast East Reservation that the leased lands are located.

The oil and gas lease herein involved, and the lands thereby affected, are the very same as those which were at issue in *Murphy Corporation v. Fontenot*, 225 La. 379, 73 So. 2d 180, certiorari denied, 348 US 831, 99 L Ed 655, 75 S Ct 54. In upholding therein the State's levy against the lessee of a severance tax at the time of severance of the minerals from the leased lands, the Supreme Court of Louisiana said:

> "* * * the land leased was not to be used for the erection of a fort, magazine, arsenal, dock-Yard or other needful buildings for military purposes."

And, still further, it remarked:

> "The acceptance * * * by the Secretary of War states that the property is to be used for military pur-

poses. When the Secretary of War transferred certain portions of the land to the Department of the Interior, and the Commandant of the Air Base certified that such leases would not interfere with the governmental operations of the Air Base, we had a splendid affirmative of the position taken by the State."

It was established in that case that the leased land was actually physically separated from the land used for the governmental purposes of the Air Force. This is reflected by the following additional quotation from that case, viz:

"The land leased was set apart from the land used for the governmental purposes of the Air Force Department. *In fact, there was a dividing fence between the oil field and the Air Force Base.* The private owners were granted the right of use and control over all instrumentalities, owned and constructed by them, such as drilling machines, towers, tanks and pipe lines for their private commercial purposes to explore for oil and gas and to reduce such to private ownership." (emphasis supplied).

The existence of such "dividing fence" as referred to by the Louisiana Supreme Court in *Murphy v. Fontenot*, supra, is established by the lease itself, wherein in Sec. 2, paragraph (r) (1) and (2), it is provided as follows:

"Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(r) Use and Protection of Property.—

(1) Except as may otherwise be authorized in writing by the Department of the Air Force, and to the extent that this lease covers lands embraced in tracts 1, 2, and 3 as described in the notice of sale of this lease, not to utilize or otherwise invade the surface of

(i) That portion of Tract 1 embracing the N ½ SE ¼, N ½ SE ¼ SE ¼ SW ¼ SE ¼ SE ¼ SW ¼ SE ¼ sec. 10, and the NW ¼ SW ¼ sec. 11, T. 17 N., R. 12 W.

(ii) That portion of Tract 2 embracing the W ½ NW¼ sec. 7, T. 17 N., R. 11 W.

(iii) That portion of Tract 3 embracing the W ½ W ½ sec. 6, T. 17 N, R. 11 W.

(2) *The use and occupancy of the remaining leased lands i. e. that portion of the lease not included in any of the above described lands of the preceding paragraph, is subject to relocating at the sole expense of the lessee, the boundary fence of the Barksdale Air Force Base in the manner and to the extent prescribed by the officer in charge of said Base to the end that such portion of the lease will be outside such relocated fence and no lease operations permitted within such fence.* In addition the lessee shall construct and maintain a fire break if and to the extent reasonably required by said officer in charge, such fire break to parallel the relocated fence." (emphasis supplied)

Still further Section 1 of the lease grants to the lessee the right "except as is otherwise provided in section 2(r) hereof" (the portions pertinent hereto being

quoted hereinabove) to construct and maintain on the 2060 acres leased works, buildings, and other facilities necessary to the full enjoyment of the lease.

As to the land traversed by the two pipelines of Humble Pipe Line Company (located within the developed area of the base, and not a part of the said East Reservation), the United States finds itself with only a naked or imperfect ownership, for a servitude or real right across the land under which the lines pass is clearly vested in said company. LSA-C. C. Art. 490. Either the Federal Government took the lands donated to it subject to such servitude, if, in fact, then existing, or a grant of right of way was subsequently made by it to such company. Thus, either the United States originally acquired an imperfect title, or else its full ownership was later reduced, as to such land burdened with a servitude, to that of an imperfect title. Exclusive jurisdiction was either never possessed, or it was thereafter relinquished.

Neither the oil field equipment nor the pipelines belonging to the taxpayers and sought to be taxed have any logical connection with or benefit to the military purpose of the Air Base. In neither the operation of the oil field nor the pipelines was the respective taxpayer militarily engaged. *Murphy Corporation v. Fontenot*, supra, 73 So. 2d, at page 184.

To the extent necessary for the enjoyment of the lease and servitude, the Federal Government abandoned its control over the lands involved in such activities. This Court considered for the first time the question of the effect

on Federal sovereignty of a property's transfer by the United States to private hands in *S. R. A. v. Minnesota*, 327 US 558, 90 L. Ed. 851, 66 S Ct 749, where was involved an executory contract of sale with title yet remaining in the Government, and said:

> "As the purpose of clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power."

In *Fort Leavenworth R. R. Co. v. Lowe*, 114 US 525, 29 L Ed 264, 5 S Ct 995, this Court clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of its own powers, viz:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general

government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over any other places within her limits.*" (emphasis supplied)

III.

Evidence of Intention of United States Not to Accept Exclusive Jurisdiction

In any event, the facts clearly establish that the Federal Government did not intend to accept the grant of exclusive jurisdiction which was ceded to it by the State of Louisiana. Nor, of course, was it compelled to do so. Such was recognized by this Court in *Silas Mason Co. v. Tax Commission*, 302 U S 186, 82 L Ed 187, 58 S Ct 233, wherein (302 US 207, 208) it said:

> "The mere fact that the Government needs title to property within the boundaries of a state * * * does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction."

In *International Business Machines Corporation v. Ott* 230 La. 666, 89 So. 2d 193, the Supreme Court of Louisiana upheld certain State imposed ad valorem taxes on business machines owned by the plaintiff and leased to the Federal Government, and situated on sites over which jurisdiction had been ceded to the United States. It said:

> "The view of presumed acceptance of ceded jurisdiction which was followed in certain cases, was subjected to a thorough re-examination in two suits presented to the Court in the term beginning October, 1937; James v. Dravo Contracting Company, 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155, and Silas Mason Co. v. Tax Commission, 302 U. S. 186, 58 S. Ct. 233, 82 L. Ed. 187."

And, still further it said:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant."

It was concluded in that case that the acceptance by the United States of various services (fire protection, sewerage, water and drainage facilities, police traffic regulation) furnished by the City of New Orleans failed to indicate an intention to exercise control in those respects, but rather manifested a contrary intent, citing Silas Mason, supra.

The record herein reveals that Barksdale Air Force Base is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the parish school system a per capital charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the

State and Parish authorities for those services. The State appelate court herein very appropriately said:

> "Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects."

Furthermore, under the terms of the oil and gas lease, in Section 2, under Rents and Royalties, (7) (K), the lessee is required

> "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property or assets of the lessee; * * *"

This lease evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base.

IV.

Taxing Power Basic to Purpose and Function of State Government

The taxing power of a State flows from a recognized continuing necessity to accomplish its inherent purposes and functions, and is, therefore, essential and basic to its very survival and sovereign existence.

84 CJS 41, § 4;

Bates v. Little Rock, 361 US 516, 4 L Ed 2d 480, 80 S Ct 412.

In the latter case, citing *James v. Dravo Contracting Co.*, 302 US 134, 82 L Ed 155, 58 S Ct 208, the Court aptly commented:

> "No power is more basic to the ultimate purpose and function of government than is the power to tax."

The State's legislative consent as contained in Act No. 12 of 1892, as amended by Act No. 31 of 1942, and embodied in the State's Revised Statutes as Title 52 § 1, guarantees as to the lands donated exemption from all taxation, assessments, and charges levied under authority of the State. The taxes in these instances were not levied against the Federal Government, nor are they levied against any of its lands or instrumentalities.

The record utterly fails to show that such taxes have affected, impeded, or interfered with in any way the military or governmental functions of the United States. To the contrary, it is abundantly established that the State's exercise of taxing power has done no violence to Federal right or intent. The facts clearly reveal that the State's jurisdiction in these respects has been entirely consonant with the recognized concept of independence and sovereignty of the Federal Government.

As proof thereof, there was the transfer of the leased lands by the Secretary of War to the Department of the Interior and the certification by the Commandant of the Air Base that such leases would not interfere with the governmental operations thereof; the physical separation of the leased lands from the Air Base by a dividing fence, and the autonomous development and operation of

the oil field; the lease provision with regard to the payment of taxes; and, quite significantly, neither the Air Base nor the Federal Government itself has ever complained of any interference or jeopardy.

James v. Dravo Contracting Co., supra, involved the question of whether a tax imposed by the State of West Virginia upon the gross receipts of a contractor under contracts with the United States was constitutional. In holding that the tax did not interfere with the performance of federal functions and was a valid exaction, this Court said:

> "The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system. * * * We said [Willcutts v. Bunn, 282 US 216, 51 S Ct 125, 75 L. Ed. 304, 71 A. L. R. 1260]: 'The power to tax is no less essential than the power to borrow money, and, in preserving the latter, it is not necessary to cripple the former by extending the constitutional exemption of taxation to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of the functions of government.'"

As still further authority favoring the exercise of a State's jurisdiction in the exaction of a tax where it is not imposed upon, or in anywise affects, the property or

functions of the Federal Government, see *Fort Leavenworth R. R. Co. v. Lowe*, supra; *Silas Mason Co. v. Tax Commission*, supra; *International Business Machines Corporation v. Ott*, supra; and, *Mississippi River Fuel Corporation v. Fontenot* (CCA 5) 234 F 2d 896, certiorari denied, 352 US 916, 1 L Ed 2d 122, 77 S Ct 213, wherein was upheld, just as in Murphy Corporation v. Fontenot, a severance tax imposed by the state of Louisiana on a severer of oil and gas from the very same leased lands as are herein involved.

V.

Sovereign Immunity as to State Taxation Does Not Extend to Others

The agreement of lease entered into by the Federal Government, as lessor, and the taxpayer, Natural Gas and Oil Corporation, as one of the original lessees, is the law of the case.

Murphy Corporation v. Fontenot, supra.

This agreement provides, among other things, as aforesaid, that the lessee must "pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee * * *" But, the taxpayers contend that this is merely a "stock phrase" and not intended to impose upon the lessee the obligation to pay such taxes as are herein imposed.

In *Murphy Corporation v. Fontenot*, supra, the Supreme Court of Louisiana rejected such a contention in the following language, to-wit:

> "To follow the plaintiff's contention, we must give no effect to the mandatory provisions of Section 2 (7) (k) of the lease in question, and we must likewise say that such a provision together with the pertinent authorities on Constitutional questions by the courts are mere abstractions affording no real protection."

The situation simply is that after accepting the provisions of the lease and agreeing to be bound thereby, Natural Gas and Oil Corporation and its successor, Mississippi River Fuel Corporation, are attempting to clothe themselves with the mantle of governmental immunity. Their claim, just as that of Humble Pipe Line Company, is based solely on the fact that their privately owned properties, used and maintained by them for their commercial purposes, are situated within the enclosure of Barksdale Air Force Base. This constitutes no valid basis for immunity, for appropriate hereto is the following language from *Esso Standard Oil v. Evans* (U. S. v. Evans) 345 US 495, 97 L Ed 1174, 73 S Ct 800, to-wit:

> "The constitution does not extend sovereign exemption from state taxation to corporations or individuals contracting with the United States merely because their activities are useful to the government."

In *Mississippi River Fuel Corporation v. Fontenot*, supra, certiorari denied, the Fifth Circuit Court of Ap-

peals answered the taxpayer's claim of immunity, and its contention as to the lease provision, as follows:

> "Putting to one side all the refinements which have attended the long struggles over jurisdiction, as instanced in the cases, and over the effort to throw over private operations the protective mantle of governmental immunity, all that is presented for decision in this case is whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable under the general laws of the state for severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use. For the same reason that the statute under which the exaction is made is a general excise statute, not directed at any particular person or property but at all persons who are severers, it cannot be said that the provision in the lease obliging the lessees, as one of the considerations for it, to pay the taxes, was not fully effective."

If the properties here taxed were located on any other land in the State, the tax liability would undoubtedly exist. Just as in the case of the severance tax, the ad valorem tax is not directed at any particular person or property, but, rather, is a tax on all property in Louisiana not otherwise exempted by the Constitution or Statutes of the State. For this reason neither can the taxpayers be heard to say here that the lease provision requiring the lessee, as a consideration for said lease, to pay the taxes, is not equally applicable and effective.

VI.

State Tax Law Existing at Time of Acquisition Remains Enforceable

Paul v. United States, 371 US 245, 9 L Ed 2d 292, 83 S Ct 426, a case before this Court on petition for certiorari, involved the question of whether California could enforce her minimum wholesale price regulations as respects milk sold to the United States at three military installations located within California and used for strictly military consumption, for resale at federal commissaries, and for consumption or resale at various military clubs and post exchanges. As regards the use last designated, for which nonappropriated funds were used, the Court said:

> "This brings us to the question whether Congress has power to exercise 'exclusive legislation' over these enclaves within the meaning of Art. 1 § 8, cl. 17, of the Constitution. * * *
>
> "In either event — whether the land is acquired by purchase or condemnation on the one hand or by cession on the other — a State may condition its 'consent' upon its retention of jurisdiction over the lands consistent with the federal use. James v. Dravo Contracting Co. supra (302 US 146-149). Moreover, as stated in James Stewart & Co. v. Sadrakula, 309 US 94, 99, 100, 84 L Ed 596, 600, 60 S Ct 431, 127 ALR 821:
>
> " 'The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary, its language has long been interpreted so as to permit the continuance until

abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred. This assures that no area however small will be left without a developed legal system for private rights.'

"The conditions expressed in the California Acts, by which California consented to 'the purchase or condemnation' of land by the United States for the prescribed purposes, do not undertake to make applicable to the federal enclaves all future laws of California. Since a State may not legislate with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States, only State law existing at the time of the acquisition remains enforceable, not subsequent laws. See James Stewart & Co. v. Sadrakula, 309 US 94, 84 L Ed 596, 60 S Ct 431, 127 ALR 821, supra; Arlington Hotel v. Fant, 278 US 439, 73 L Ed 447, 49 S Ct 227. * * *"

The Court, therefore, remanded the case to determine whether California's minimum wholesale milk price law was in effect at the time the lands for the enclaves were acquired by the Federal Government. Thereafter, on February 18, 1963, this Court denied certiorari.

In these instances, the ad valorem taxes are imposed by virtue of LSA-Const. Art. 10, § 1, and LSA-RS 47:1701 et seq. Art. 10, § 1, of the Louisiana Constitution has been a part thereof since its adoption in 1921; and, the said statutory provisions, as now embodied in the Revised Statutes of Louisiana, were enacted in the years 1921 and 1924. It is, therefore, clear that such

tax laws existed when the United States acquired the lands by donation in 1930.

It was made clear in *James Stewart & Co. v. Sadrakula* that the State law sought to be applied in *Arlington Hotel v. Fant*, 278 US 439, 73 L Ed 447, 49 S Ct 227, had been enacted after the lands for Hot Springs National Park had been acquired, and, therefore, was not enforceable as to such reservation.

There is no conceivable reason why the State's legislative 'consent' should be construed as an intent to yield exclusive jurisdiction in such cases as these. To the contrary, it is submitted that under the authority of the leading case of James Stewart & Co. v. Sadrakula, supra, and Paul v. United States the State's tax laws existing at the time of the acquisition remains enforceable. The Federal Government gave express recognition to this in embodying as a part of the oil and gas lease the provision for the payment by the lessee of all taxes lawfully assessed and levied "under the laws of the State or the United States". Assuming that Congress has the power to legislate as to such a matter, the fact is that it has not done so; moreover, since the decision in Murphy Corporation and Mississippi River Fuel Corporation, in both of which certiorari was denied by this Court, Congress has given complete assent to the State's exercise of tax jurisdiction over the property levied upon by its failure to so legislate itself, and to immunize the said taxpayers, in the more than ample time that has elapsed.

CONCLUSION

From the foregoing it is plainly proven that the decision of the State appellate court is eminently correct. The law and the facts both support it; and, logic and reason sustain it.

The lands here were donated to the Federal Government for military purposes, and the State granted to it the right of exclusive jurisdiction over them for military purposes. It further guaranteed that they would remain exempt from taxes levied or imposed by or under its authority. But, in these instances the taxes are not levied upon, nor do they affect in any way whatever, any property or instruments of the Federal Government, but, rather, are exacted from the privately owned properties of others, used and maintained by them for their commercial purposes.

The record overwhelmingly establishes that the operation of the oil field and the pipelines have no logical connection with or benefit to the military purpose of the Air Base. Neither are those who operate them in any sense of the term militarily engaged.

It is highly significant that the Federal Government has not complained of any intereference whatever, by reason of these State-imposed taxes, with any of its military or governmental functions or activities. In fact, the taxing jurisdiction of the State has been shown to be entirely compatible and consonant, both in theory and in practice, with the primary objective of the Air Base.

Even if it can be assumed that Congress acquired the power of exclusive legislation over the lands of the reservation, the circumstances in the record demonstrate that the Federal Government has not accepted such jurisdiction as to the leased lands and that traversed by the pipelines, at least to the extent that it would exclude state taxation of the privately owned properties of others, used and maintained in their commercial activities on said lands. And, if otherwise, a relinquishment or abandonment of any such exclusive authority and control is clearly indicated as to the lands on which the taxed properties are situated.

The Federal Government has given clear and unequivocal expression to the assumption that the State taxing jurisdiction would apply to the property of others in the conduct of their commercial activities on certain lands of the reservation. It specifically applies to the leased lands, but shows a general intent as to the pipelines as well.

The transfer of the lands to the Department of Interior and the certification by the Commandant of the Air Base that such lease of lands for oil and gas purposes would not interfere with the primary operation of the reservation furnishes firm evidence of the Government's intent to set such lands apart from the remainder of the lands acquired. The dividing fence is additional proof thereof. The independent operation of the oil field and pipelines confirms this. The lease provision obliging the lessee to pay all taxes due on the minerals produced and

on its other properties stands as further immutable evidence of the recognition of the State's jurisdiction to tax such privately owned properties.

And, finally, the cases have long interpreted the exclusive legislation clause of the United States Constitution to permit a continuance, until abolished, of those State laws existing at the time of surrender of jurisdiction which govern the rights of the occupants of the lands transferred. This should be particularly true where such laws would preserve the taxing power of the State, which is so vital to its sovereign existence, over privately owned properties, used and maintained in commercial pursuits.

The Federal Government has not legislated so as to impose similar taxes on such subjects, nor has acted to immunize the said corporations involved. Its failure to do so, despite the lapse of many years following the court decisions which upheld State taxes imposed upon the severer of minerals from the soil of the reservation and upon privately owned business machines leased to the Federal Government and situated on sites ceded to it, most assuredly stands as an assent to the State's taxing authority. This Court's denial of certiorari in the State severance tax cases affords further approval thereof.

The decision in *Surplus Trading Company v. Cook* 281 US 647, 74 L Ed 1091, 50 S Ct 455, so heavily relied upon by the taxpayers, is not apposite to the cases here presented, for there the Court was careful to point out that Camp Pike came within the specific wording of Art. 1 Sec. 8, cl. 17, of the United States Constitution, relat-

ing to "forts, magazines, arsenals, dockyards, and other needful buildings." The facts there involved are entirely different from those here.

Accordingly, the decision of the Court of Appeal, Second Circuit, of the State of Louisiana, should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been served on Leon O'Quin, Esq., of counsel of record for the petitioner, Humble Pipe Line Company, by depositing the same in the United States mail with First Class Postage prepaid, addressed to him at his Post Office address.

Shreveport, Louisiana, this _____ day of February, A. D., 1964.

FERDINAND A. CASHIO
of Counsel for Respondent

APPENDIX

LOUISIANA CIVIL CODE —

LSA-C. C., Art. 490

"Art. 490. Ownership is divided to perfect and imperfect.

Ownership is perfect, when it is perpetual, and when the thing is unincumbered with any real right towards any other person than the owner.

On the contrary, ownership is imperfect, when it is to terminate at a certain time or on a condition, or if the thing, which is the object of it, being an immovable, is charged with any real right towards a third person; as a usufruct, use or servitude.

When an immovable is subject to a usufruct, the owner of it is said to possess the naked ownership."

LOUISIANA CONSTITUTION —

LSA-Const., Art. 10 § 1

"Sec. 1. Taxing power; specific taxes

Section 1. Vesting of power: restrictions; assessments and valuations. The power of taxation shall be vested in the Legislature; shall never be surrendered, suspended or contracted away; and all taxes shall be uniform upon the same of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value, ascertained as directed by law * * *"

LOUISIANA REVISED STATUTES —

LSA-RS 47:1701

"Sec. 1701. Imposition of tax

A. Tax of five and one-fourth mills on the dollar. There are hereby levied for state purposes, annual taxes amounting in the aggregate to * * * of the assessed value of all property situated within the state except such as is especially exempted from taxation by law; the property not otherwise exempt from taxation of all nonresident persons, firms, corporations, partnerships, associations, or companies is hereby declared subject to assessment and taxation, in the same manner as all other property in the State of Louisiana."

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY, PETITIONER

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

No. 354

NATURAL GAS AND OIL CORPORATION AND MISSISSIPPI RIVER FUEL CORPORATION, PETITIONERS

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

ON WRITS OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, SECOND CIRCUIT.

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

Louisiana has levied ad valorem property taxes on pipelines owned by the respondents within Barksdale Air Force Base. The United States has no financial interest in these taxes. No issue as to taxation of federal instrumentalities is here involved. But the question whether the United States has exclusive

jurisdiction over Barksdale Air Force Base is of vital concern to the federal government. Apart from the District of Columbia, there are within the United States more than 5,000 areas, on which about 1,000,000 persons reside, that are considered by the federal government to be within its exclusive jurisdiction. If such events as the lease of property within the enclave to private enterprises, the purchase of water from municipalities, or the use of the local school system may cause a loss of exclusive jurisdiction, as the court below seems to hold, the status of many, if not most, of those areas—and the laws by which their residents are governed—has been cast in doubt. This is true not only as to the taxation of the persons and private property in federal enclaves but also the applicability of the States' criminal and civil law in those areas.[1] We think it important that this cloud upon federal jurisdiction over the Barksdale Base and other federal enclaves should be removed.[2]

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[1] In this case, Louisiana reserved the right to administer its own criminal laws and to serve its civil process within the Base when the federal government acquired the initial land for the Base. Thus, this case narrowly involves only whether Louisiana tax and civil law applies within the Barksdale Base. But the outcome of this case will determine whether state criminal, as well as civil and tax law, applies to federal land where no reservation has been made by the State.

[2] Jurisdiction over federal areas has been the subject of an exhaustive study and report over a three-year period by a committee of general counsels and other major law officers of the federal agencies most directly concerned. Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, *Report* (G.P.O.) (Part I) April 1956, (Part II) June 1957. The report states that Section 355 of the Revised Statutes of the United States required that a State give its consent to the federal government's acquisition of Land

BARKSDALE AIR FORCE BASE IS SUBJECT IN ITS ENTIRETY TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES WITH EXCEPTIONS WHICH ARE IMMATERIAL HERE

1. EXCLUSIVE JURISDICTION WAS CEDED TO THE UNITED STATES IN 1930

The 1929 appropriation for military purposes included funds for construction of various airbase facilities at Shreveport, Louisiana:

> *Provided*, That the Secretary of War is hereby authorized, when directed by the President, to accept in behalf of the United States, free from encumbrances and without cost to the United States, the title in fee simple to such land as he may deem necessary or desirable, in the vicinity of Shreveport, Louisiana, approximately 25,000 acres, more or less, as a site for an aviation field.

Act of February 25, 1929, c. 316, 45 Stat. 1301, 1304. The lands were deeded to the United States by the

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prior to expenditure of public funds for the construction of improvements on such lands. Article I, section 8, clause 17, of the Constitution, provides for exclusive federal jurisdiction over all property purchased by the federal government with the consent of the state legislatures. The federal government therefore received exclusive jurisdiction over nearly all the land which it acquired in the 100-year period preceding the amendment of Section 355 in 1940 (Act of February 1, 1940, 54 Stat. 19, reenacted October 9, 1940, 54 Stat. 1083, 40 U.S.C. 255), which made federal acquisition of jurisdiction optional rather than mandatory. *Id.*, Part II, pp. 9–10. While federal assent is necessary to federal acquisition of jurisdiction under state statutes, such as that of Louisiana, proffering jurisdiction to the United States, during this 100-year period such assent was presumed. *Id.*, Part II, pp. 48–54. The committee recommended the enactment of general legislation to permit the heads of executive agencies to retrocede jurisdiction over individual federal areas to the States in whole or part. *Id.*, Part I, p. 72. Such legislation has been introduced in the present Congress (S. 815 and H.R. 4433) but has not yet been passed.

City of Shreveport, the State of Louisiana, and Bossier Levee District, and the Secretary of War accepted the deeds (R. No. 354, pp. 58, 66, 71).[3] The conveyance by Shreveport reserved royalties for oil and gas that might be produced from leases on the properties until June 30, 1932 (R. No. 354, p. 57). At that time, Louisiana law, Act No. 12 of 1892, provided that the United States "shall have the right of exclusive jurisdiction over the property" acquired for customhouses, courthouses, arsenals, national cemeteries or for other purposes of the government of the United States. Act No. 12 reserved the right to the administration of the criminal laws of the State and the service of civil process within the area acquired by the federal government (Pet. Br. No. 329, App. 31).

Under settled law, the jurisdiction provided by this statute vested in the United States upon acceptance of transfer of the land. *Mason Co.* v. *Tax Comm'n*, 302 U.S. 186, 207; Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within The States, *Report*, Part II, pp. 48–54. This rule has not been questioned in this case. Even if the State's intention to grant or the federal government's refusal to accept exclusive jurisdiction could be implied from federal activity—for example, as the Louisiana courts have suggested, lease of property within the base for commercial use or grant of a right

[3] From the language of the admissions of facts in these cases (R. No. 329, p. 8; R. No. 354, p. 17), one might infer that the title conveyed was conditioned upon use for airbase purposes. In fact, all conveyances were of fee simple title (R. No. 354, pp. 56, 64, 67, 68, 69, 72). The field was later expanded by other acquisitions, some in condemnation proceedings, but no distinction has been made in this case because of this fact.

of way to a public utility—no such activity had occurred at that time. Nor is there anything to indicate an intention of federal authorities in the 1930's to secure less jurisdiction than was normally acquired over other military establishments. The military departments have been described as following "the traditional Federal policy, almost uniform prior to 1940, that the United States needs to acquire exclusive legislative jurisdiction over the sites of its installations if it is to perform its constitutional functions effectively." *Id.*, Part I, pp. 39–40.

In short, there can be no question that, upon the acquisition of the Base in 1930 with the express consent of, and grant of exclusive jurisdiction by, the Louisiana legislature, the United States acquired the power accorded by the United States Constitution (Art. I, § 8, cl. 17) "To exercise exclusive Legislation in all Cases whatsoever" in the area acquired. It is equally clear that a State lacks power to tax property located within an area of exclusive federal jurisdiction. *Surplus Trading Co* v. *Cook*, 281 U.S. 647. Any intimation to the contrary in the opinion below or in that of the Louisiana Supreme Court in *Murphy Corp.* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, which the court below followed, is a product of a persistent confusion of the immunity of the United States and its instrumentalities from state taxation with a State's lack of jurisdiction within federal enclaves (see R. No. 354, pp. 47–48, 102, 104).

2. THERE HAS BEEN NO PARTIAL RETROCESSION OF JURISDICTION

Nothing has occurred since 1930 to cause the loss of the exclusive jurisdiction over the Base then acquired.

Like the authority to sell or transfer government lands, *Alabama* v. *Texas*, 347 U.S. 272, the authority to retrocede jurisdiction must be found in some Act of Congress, *Offutt Housing Co.* v. *Sarpy County*, 351 U.S. 253, 260.[4] We know of none applicable here. Consequently, even if there was some evidence that federal officials intended to retrocede jurisdiction, such executive action would have been ineffective to accomplish it.

In any event, there is not the slightest indication of any federal intent to retrocede jurisdiction. The basis for the leases at Barksdale for mineral development was the general authority of the executive to develop federal mineral resources which otherwise would be drained by adjoining landowners. 40 Op. Att. Gen. 41. Under this authority and under his delegated authority to make land orders concerning the allocation within the federal government of administrative re-

[4] In the entire history of the United States, Congress has authorized retrocession of jurisdiction in only 29 instances. See Hearings Before the Senate Subcommittee on Intergovernmental Relations of the Committee on Government Operations on S. 815, 88th Cong., 1st Sess. (1963), p. 40. Illustrative are five instances of such actions by the 87th Congress: P.L. 87-160 of Aug. 25, 1961, 75 Stat. 398, authorized the Secretary of the Army to retrocede jurisdiction with respect to Fort Sheridan, Illinois; P.L. 87-180 of Aug. 30, 1961, 75 Stat. 411, retroceded concurrent jurisdiction with respect to two public highways traversing Camp Lejeune, North Carolina; P.L. 87-206 of Sept. 6, 1961, 75 Stat. 475, retroceded jurisdiction with respect to the Atomic Energy Commission installation at Livermore, California; P.L. 87-636 of Sept. 5, 1962, 76 Stat. 436, authorized the Secretary of the Air Force to retrocede jurisdiction with respect to Eglin Air Force Base, Florida; and P.L. 87-660 of Sept. 14, 1962, 76 Stat. 545, authorized the Secretary of the Navy to retrocede jurisdiction with respect to the Clearfield Naval Supply Depot, Utah.

sponsibility for federal lands, the Secretary of the Interior issued five orders transferring the jurisdiction over the oil and gas deposits at Barksdale to the Department of the Interior.[5] Far from indicating an intent to retrocede to Louisiana any part of the exclusive jurisdiction ceded to the military in 1930, the orders expressly provided:

> 3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.
>
> 4. Prior to advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.
>
> 5. Prior to execution of any lease or development authorized by the Department of the Interior, the approval of the Department of the Air Force shall be obtained to assure that there is no interference with the primary use of Barksdale Air Force Base.

Thus, the order explicitly stated that "primary jurisdiction" remained with the Air Force. But even if exclusive jurisdiction over part of the Base had been transferred to the Department of the Interior for mineral leasing, this would be irrelevant. There is nothing in Louisiana's original grant of exclusive jurisdiction to the United States which requires that every portion of the Base be kept within the jurisdic-

[5] Public Land Orders 701, Feb. 21, 1951, 16 Fed. Reg. 1901; 884, Feb. 5, 1953, 18 Fed. Reg. 846; 1807, Feb. 27, 1959, 24 Fed. Reg. 1651; 2178, Aug. 10, 1960, 25 Fed. Reg. 7878; 2639, March 28, 1962, 27 Fed. Reg. 3167.

tion of the military or that forbids its use for non-military purposes. In *Benson* v. *United States*, 146 U.S. 325, it was contended that jurisdiction passed to the United States only over such portions of a military reservation as were actually used for military purposes, and that the United States therefore had no jurisdiction over a homicide which was committed on a part of the reservation used for farming. In rejecting this contention, the Court said (*id.* at 331):

> But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. * * * The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put.

These views equally apply to alleged retrocession of jurisdiction.

The taxation clause of the oil and gas leases is a standard provision long used in leases under the Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. 226, and the Mineral Leasing for Acquired Lands Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351–359. The clause requires the lessee "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States" upon the property of the lessee. Thus, it only allocates the responsibility

between lessor and lessee to pay whatever taxes are otherwise "lawfully assessed" and in no way purports to confer, on persons not a party to the lease, a jurisdiction to tax otherwise lacking. In any event, a waiver of exclusive jurisdiction to permit the assessment of state taxes within an enclave can be made only by Congress (as it did for gasoline, sales, and income taxes in the so-called Buck Act, 4 U.S.C. 104–110), not by an administrative agreement to a clause in an oil lease.

Nor was the federal government's exclusive jurisdiction lost as a result of any of its other activities relied on by the Louisiana courts. There is no indication that any of the Base has been abandoned. Exclusive jurisdiction is not lost either by the lease of property within the enclave for commercial use, *Arlington Hotel Co.* v. *Fant*, 278 U.S. 439, or by a grant to a public utility of a right of way across the enclave, *United States* v. *Unzeuta*, 281 U.S. 138. The United States can use land of which it is the full owner like any other owner without implying that it is abandoning exclusive jurisdiction. And the suggestion that the Base's purchase of water from the parish and the attendance of Base children at state schools (for which the United States makes a contribution) "manifested an intent on the part of the Federal Government not to exercise" or "accept" exclusive jurisdiction (R. No. 354, p. 106), is a *non sequitur* requiring no answer.

CONCLUSION

For the reasons stated here and in the briefs for petitioners, we respectfully submit that the judgments should be reversed with directions to grant the relief sought.

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No. 329

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUMBLE PIPE LINE COMPANY
Petitioner,

vs.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,
Respondent

On Writ of Certiorari to the Court of Appeal, Second Circuit, State of Louisiana

---

REPLY MEMORANDUM FOR HUMBLE PIPE LINE COMPANY.

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LECOMTE, SHREVEPORT, LOUISIANA

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REPLY MEMORANDUM FOR HUMBLE PIPE LINE COMPANY.

Upon acquisition of the lands of Barksdale Air Force Base by the United States, exclusive legislative jurisdiction over that enclave then vested in Congress under the provisions of Art. 1, § 8, cl. 17, of the Constitution of the United States, and under Act No. 12 of the Legislature of Louisiana for the year 1892 such jurisdiction was specially ceded to the United States.

In *Kohl v. United States*, 91 U.S. 367, 23 L. ed. 449, this Court, in considering the authority of the United States to acquire lands for governmental purposes by con-

demnation in the several states, referred to an act of Congress of March 2, 1872. which gave authority to the Secretary of the Treasury to purchase a suitable site in Cincinnati for the erection of a building for the accommodation of the United States courts, etc., saying:

> "The authority here given was to purchase. If that were all, it might be doubted whether the right of eminent domain was intended to be invoked. It is true, the words 'to purchase' might be construed as including the power to acquire by condemnation; for, technically, purchase includes all modes of acquisition other than that of descent. But generally in statutes as in common use, the word is employed in a sense not technical, only as *meaning acquisition by contract between the parties, without governmental interference.*" (emphasis supplied)

91 U.S., p. 374.

In *Ft. Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 29 L. ed. 264, this Court quoted with approval from *People v. Godfrey*, 17 Johns 225, in which reference was made to the question of exclusive jurisdiction of the United States over Ft. Niagara, saying:

> "'If the United States,' the court added, 'had the right of exclusive legislation over the fortress of Niagara, they would have also exclusive jurisdiction; but we are of opinion that the right of exclusive legislation within the territorial limits of any state can be acquired by the United States only in the mode pointed out in the Constitution; by purchase, by consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful

buildings. *The essence of that provision is that the state shall freely cede the particular place to the United States for one of the specific and enumerated objects.*' " (emphasis supplied)

114 U.S., p. 538

In this case, the lands forming Barksdale Air Force Base were conveyed to the United States by the City of Shreveport[1] pursuant to State constitutional provisions (Art. 4, § 12)[2] permitting the municipality to acquire and transfer the same for use by the United States as an aviation field or Air Force base. The inducement or consideration for the conveyance was the Air Force establishment to be erected, for which purpose the acceptance of the conveyance was authorized by act of Congress prior to the execution of the conveyance, which was made with complete warranty of title and agreements of indemnity executed in compliance with the requirements of the duly authorized officers of the United States. (See R. p. 59, No. 354)

The conveyance made was executed pursuant to the contract between the City of Shreveport, acting in its proprietary capacity, and the United States, entered into with the express consent of the State particularly set forth in the State constitutional provision. The conveyance was

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(1) Conveyances were also made by the State of Louisiana and the Board of Commissioners of the Bossier Levee District, but those conveyances were merely supplemental or formal, relating principally to possible water bottoms in the area.

(2) See appendix to Petitioner's original brief, p. 26.

as much a purchase made by the United States with the express consent of the legislature of the State as if acquired from private interests for a specified montary consideration, and we submit that exclusive legislative jurisdiction over the property then vested in Congress pursuant to the provisions of Art. 1, § 8, cl. 17, of the Constitution of the United States.

In this connection, we quote the following extracts from the very exhaustive treatise contained in Part II of the Report of the Interdepartmental Committee For The Study of Jurisdiction Over Federal Areas Within The States (June 1957) relating to the construction of the term "purchase".

> "The term 'purchased' does, however, include acquisitions by means of condemnation proceedings, as well as acquisitions pursuant to negotiated agreements. See James v. Dravo Contracting Co., supra; Mason Co. v. Tax Comm'n, supra; Holt v. United States, 218 U.S. 245 (1910); Chaney v. Chaney, 53 N.M. 66, 201 P. 2d 782 (1949); Arledge v. Mabry, 52 N.M. 303, 197 P. 2d 884 (1948); People v. Collins, 105 Cal. 504, 39 Pac. 16, 17 (1895). The term also includes cessions of title by a State to the Federal Government. United States v. Tucker, 122 Fed. 518 (W.D. Ky., 1903). A conveyance of land to the United States for a consideration of $1 has likewise been regarded as a purchase within the meaning of clause 17. 39-Ops. A. G. 99 (1937).
>
> . . . . . .
>
> "Since acquisitions by condemnation are construed as purchases under article I, section 8, clause 17, of the Constitution, it seems that donations would also

be interpreted as purchases. See Pothier v. Rodman, 285 Fed. 632 (D.R.I., 1923), aff'd., 264 U.S. 399 (1924); question raised but decision based on other grounds in Mississippi River Fuel Corporation v. Fontenot, 234 F. 2d 898 (C.A. 5, 1956), cert. den., 352 U.S. 916".

Pages 68 and 69.

However, it seems unnecessary to determine the manner in which the exclusive jurisdiction of the United States was acquired, for if exclusive jurisdiction was not vested under the article of the Constitution, such jurisdiction was then ceded to the United States under Act No. 12 of the Legislature of Louisiana for the year 1892,(3) as admitted in respondent's brief, page 10, as follows:

"However, the consent of the State of Louisiana to the donations as contained in Act No. 12 of 1892, and as later amended by Act No. 31 of 1942 (embodied in the Louisiana Revised Statutes of 1950 as Title 52, § 1) ceded pursuant to its provisions exclusive legislative jurisdiction to the Federal government over the lands so acquired."

We have further noted from the Interdepartmental Report referred to that reservations in state statutes ceding jurisdiction have been strictly construed.

"State reservations of jurisdiction have presented few legal problems. In no instance has a State reservation of jurisdiction been invalidated, or its scope narrowed, on the ground that its effect was

(3) See appendix to Petitioner's original brief, p. 29.

to enlarge the power of the State or to interfere with the functions of the Federal Government. Instead, the reported cases involving such reservations have presented questions concerning the scope of the reservations actually made. Thus, in Collins v. Yosemite Park Co., 304 U.S. 518 (1938), it was held that a reservation by a State of the right to tax the sale of liquor does not include the right to enforce the regulatory features of the State's alcoholic beverage control act in an area in which, except inter alia the right to tax, the entire jurisdiction of the State had been ceded to the Federal Government. Similarly, in Birmingham v. Thompson, 200 F. 2d 505 (C. A. 5, 1952), it was held that even though the State, in ceding jurisdiction to the Federal Government, reserved the right to tax persons in the area over which jurisdiction had been ceded, a city could not require the payment of a license fee by a contractor operating in the area where issuance of the license was coupled with a variety of regulatory provisions. The results reached in these two cases suggest that State statutes transferring jurisdiction will be construed strictly. Only those matters expressly mentioned as reserved will remain subject to the jurisdiction of the State."

Pages 188 and 189.

CONCLUSIONS

For the reasons stated herein and in the briefs for Petitioners and for the United States as amicus curiae, it is submitted that the judgment of the Court of Appeal,

Second Circuit, State of Louisiana, should be reversed with directions to grant the relief sought.

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